

the statute, there is no basis for a § 1983 action. *See Gonzaga University v. Doe*, 536 U.S. 273, 286 (2002).³

Here, tenant plaintiffs are the intended beneficiaries of this provision of the CARES Act. While the Act is phrased in a way that prevents lessors from commencing legal action, the intent of this section is to protect renters.⁴ The tenant plaintiffs asserted rights are not “vague or amorphous” as the statutory language clearly prevents an eviction filing against the tenant during the 120-day moratorium period. This right is within the basic competence of the judiciary to enforce because the court has the ability to stay proceedings. The statute creates a binding enforcement obligation on the state as inferred by the mandatory statutory language and the absence of an alternative, comprehensive enforcement scheme written into the statute. *See Gonzaga*, 536 U.S. at 283-84; *Blessing*, 520 U.S. at 347. *See also Wright v. Roanoke Redevelopment and Housing Authority*, 479 U.S. 418, 424-25 (1987) (stating that HUD’s remedial mechanisms under the Housing Act were not comprehensive enough to suggest that Congress intended to supplant an action under § 1983); *Wilder v. Virginia Hospital Assn.*, 496 U.S. 498, 522 (suggesting that limited oversight by an executive agency is generally not enough to foreclose § 1983 actions).

³ Unless there is congressional intent to the contrary, federal funding provisions generally provide no basis for enforcement under § 1983. *See Gonzaga University v. Doe*, 536 U.S. 273, 274 (2002). As *Gonzaga* notes, however, there have been a few instances where such statutes have given rise to enforceable rights. *Id.* (citing *Wright v. Roanoke Redevelopment and Housing Authority*, 479 U.S. 418 (1987) and *Wilder v. Virginia Hospital Assn.*, 496 U.S. 498 (1990)). In enacting the CARES Act, Congress cited the Necessary and Proper clause, rather than the Spending Clause, as its constitutional authority. *See* Congressional Authority Statement, <https://www.congress.gov/bills/116/congress/house-bills/748/text/toc-H5FCB77F196104E7394A52A8F1DC5D1C2>.

⁴ *See also* CARES Act, § 4023(d) (“Renter protections during forbearance period”).

Under Section 4024 of the CARES Act, Congress intended to create a judicially enforceable right that protects tenants from being evicted during the moratorium period.

I. Tenant plaintiffs are the intended beneficiaries of § 4024.

Tenant plaintiffs are the intended beneficiaries of § 4024, as this section of the statute is intended to protect these individuals from eviction proceedings during the COVID-19 pandemic. “For a statute to create private rights, its text must be phrased in terms of the persons benefitted.” *Gonzaga*, 536 U.S. at 284; *see also N.Y. State Citizens’ Coalition for Children v. Poole*, 922 F.3d 69, 78 (2d Cir. 2019) (“[T]his factor requires more than a showing that the ‘plaintiff falls within the general zone of interest that the statute is intended to protect.’ The statute must confer a right on the plaintiff as shown by the use of rights-creating language . . . that demonstrates a statutory focus on the individual, rather than the operations of the regulated entity”). The Court in *Gonzaga* held that FERPA did not create an individual right against disclosure of educational records, in part, because the statute was phrased in terms of institutional policy and practice rather than “individual instances of disclosure.” *See* 536 U.S. at 288; *see also Blessing*, 520 U.S. at 343-44 (holding that Title IV-D of the Social Security Act, which required the State to operate its child support system in “substantial compliance” with the Act, did not intend to benefit individual children of families, rather created standards for systemic performance of the program; no individual right created by the statute). Though the statutory language in this specific section of the CARES Act is couched in terms of what the *lessor* of a covered property “may not” do, the tenant is the intended recipient of the protection because they have the right to remain in their leased dwelling. *See* CARES Act, § 4024(b)(1)-(2). The preceding section of the Act is written in explicit terms of “renter protections during the forbearance period.” *See* § 4023(d). Further, these protections are not written in terms of institutional practices, but rather pertain to individual eviction filings. *See Gonzaga*, 536 U.S. at 288; *Blessing*, 520 U.S. at 343-

44. In light of the purpose and context of this legislation, whose aim is to protect vulnerable persons during this public health crisis, a reasonable interpretation of § 4024 suggests that tenants are the intended beneficiaries of the protection created by the moratorium period.⁵

II. Tenant plaintiffs asserted interest to not be evicted during the 120-day moratorium period is not vague, and is within the court’s competence to enforce.

The interest asserted here is to not have an eviction proceeding commence against a tenant residing in a covered property during the 120-day moratorium period. *See* § 4024. This interest is not “vague or amorphous” and is judicially manageable. *See Blessing v. Freestone*, 520 U.S. 329, 340. It is within the court’s basic competence to stay eviction proceedings unless there is a basic evidentiary showing that the lessor’s property is not covered by the moratorium provision.

III. Section 4024 of the CARES Act creates a binding obligation on the state not to commence eviction proceedings during the 120-day moratorium period.

The statutory language of § 4024 creates a binding obligation on the “court of jurisdiction” not to move forward with eviction proceedings during the moratorium period. CARES Act, § 4024. Courts look to statutory construction and the use of mandatory language to determine whether there is a binding obligation on the state. *See N.Y. State Citizens’ Coalition for Children v. Poole*, 922 F.3d 69, 79-80 (2d Cir. 2019). In *Poole*, the Second Circuit held that the Adoption Assistance and Child Welfare Act created a binding obligation on the state to provide foster care maintenance payments to states with eligible plans based on the criteria

⁵ Note that this prong really rests on statutory interpretation – plain meaning vs. purpose / context. One could easily argue that the provision is plainly phrased in terms of the lessors it regulates (and then that’s the end of this whole thing). That interpretation could easily be supported by *Gonzaga*. Especially given the explicit “renters protections” heading in the preceding section (“inclusion of one implies the exclusion of others” canon of statutory interpretation). However, given the purpose and context of the legislation, there is also a valid argument tenants are the intended beneficiaries of this provision.

outlined in the statute. *See id.* The mandatory language in the statute (i.e. the use of “shall” and specific requirements), as well as its overall construction were particularly informing. *See id.* Here, § 4024 of the CARES Act specifically says “. . . the lessor of a covered dwelling *may not*. . . make, or cause to be made, *any filing with the court of jurisdiction to initiate a legal action* to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges.” § 4024(b)(1) (emphasis added). “May not” indicates mandatory language on behalf of the lessor’s actions, and rest of the clause binds “courts of jurisdiction” from hearing or initiating eviction proceedings that qualify during the moratorium. *Id.*

Congress did not intend to foreclose § 1983 as a remedy to enforce the moratorium provision of the CARES Act because there is no express or implied comprehensive enforcement mechanism in the statute to supplant § 1983.

If, under the *Blessing* factors, Congress intended to create a new right, it is presumably enforceable under § 1983. *See Gonzaga University v. Doe*, 536 U.S. 273, 283-84 (2002). However, this presumption is rebuttable if Congress expressly or impliedly foreclosed § 1983 as a remedy for enforcement, such as by assigning detailed enforcement or review procedures to a particular agency. *See id.* at 289-91. However, such procedures must be comprehensive enough to show that Congress intended to supplant § 1983 as a remedy; the availability of a review process alone or limited oversight are not enough to show that Congress intended to foreclose a private remedy. *See Blessing v. Freestone*, 520 U.S. 329, 347-48 (1997); *Wilder v. Virginia Hospital Assn.*, 496 U.S. 498, 520-23 (1990); *Wright v. Roanoke Redevelopment and Housing Authority*, 479 U.S. 418, 424-25 (1987).

In *Gonzaga*, the Court found that Congress expressly foreclosed a private remedy for disclosure violations under FERPA. *Gonzaga*, 536 U.S. at 289-91. FERPA expressly assigned the Secretary of Education to establish a review board to assess violations of the Act. *Id.* at 289.

The Secretary created the FCPO within the Department of Education to act as the review board; students could file complaints with the Board, who then would investigate the claims. *Id.* at 289-90. Further, Congress amended the statute to prohibit regional offices from conducting such investigations, out of concern for varying interpretations of the provisions. *Id.* at 290. The Court interpreted this to mean that Congress intended uniformity, thus intended to avoid private lawsuits which would result in various interpretations of the statute. *Id.*

In contrast to the detailed review process in *Gonzaga*, the Court has held that noncomprehensive remedial measures or limited oversight by agencies are not enough to foreclose a private remedy. *See Wilder*, 496 U.S. 498, 520-23 (1990); *Wright v. Roanoke Redevelopment and Housing Authority*, 479 U.S. 418, 424-29 (1987); *see also Blessing v. Freestone*, 520 U.S. 329, 348 (1997). In *Wright*, the Court found that there was no express Congressional intent in the language of the Brooke Amendment to the Housing Act, or the legislative history, to suggest that § 1983 could not be a remedy. 479 U.S. at 424-25. While HUD had a grievance procedure, such proceedings did not affect tenants' rights "to seek 'trial *de novo* or judicial review in any judicial proceedings.'" *Id.* at 426.⁶ Further, while HUD has the ability to audit, enforce contracts, and cut off funds to public housing, such "generalized powers are insufficient to indicate a congressional intent to foreclose § 1983 remedies." *Id.* at 428. Similarly, in *Wilder*, although the Medicaid Act required states to adopt an appeals procedure for Medicaid reimbursement rates to medical professionals, such procedures were not comprehensive enough to show congressional intent to supplant § 1983 as a remedy. 496 U.S. at 521-23. Further, limited oversight of such rates by the Secretary was not enough either. *Id.* at 521.

⁶ Tenants in this case took issue with the calculation of rent under the Brooke Amendment, as it should include reasonable utilities under the statute.

Here, there is no remedy or procedure outlined in the CARES Act to deal with enforcement of the moratorium provision under § 4024. Under § 4020, Congress created the Congressional Oversight Commission to oversee the implementation of this portion of the CARES Act; however, the Commission does not have any adjudicatory functions. *See* CARES Act, § 4020(b), (e). The Commission is tasked with broad oversight of implementation of the Act. *Id.* § 4020(b)(1)(A). While the Commission has the power to hold hearings, take testimony, and administer oaths of witnesses, it does not have powers or procedures that mirror a judicial proceeding. *See id.* § 4020(e)(1). This Commission is unlike the detailed scheme outlined in *Gonzaga*, and is more similar to the generalized oversight powers in *Wright* and *Wilder*. *Compare Gonzaga*, 536 U.S. at 289-91, with *Wilder*, 496 U.S. 498, 520-23 (1990); *Wright v. Roanoke Redevelopment and Housing Authority*, 479 U.S. 418, 424-29 (1987). Lacking a comprehensive remedial scheme to enforce § 4024, Congress could not have intended to foreclose § 1983 as a remedy to enforce the moratorium provision.

CONCLUSION

Section 4024 of the CARES Act creates a right for tenants living in covered properties to be free of new eviction proceedings during the 120-day moratorium period. While the provision is phrased in terms of what a lessor cannot do during the moratorium, tenants are the intended recipient of such protections. This right is clear and judicially enforceable. Further, § 4024 creates a binding obligation on “courts of jurisdiction” to not begin or enforce eviction proceedings against tenants living in covered properties during the moratorium period. Lastly, there is nothing in the statutory language or legislative history to suggest that Congress foreclosed § 1983 as a remedy to enforce this provision.

Applicant Details

First Name	Christian
Middle Initial	A
Last Name	Pierre-Canel
Citizenship Status	U. S. Citizen
Email Address	cpierreccanel@uchicago.edu
Address	<div><div>Address</div><div>Street</div><div>8 E. 9th Street Apt. 1710</div><div>City</div><div>Chicago</div><div>State/Territory</div><div>Illinois</div><div>Zip</div><div>60605</div><div>Country</div><div>United States</div></div>
Contact Phone Number	2398870987

Applicant Education

BA/BS From	University of Florida
Date of BA/BS	May 2015
JD/LLB From	The University of Chicago Law School
	https://www.law.uchicago.edu/
Date of JD/LLB	June 1, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Chicago Journal of International Law
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Professional Organization

Organizations	Just the Beginning Organization
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Recommenders

Masur, Jonathan
jmasur@uchicago.edu
773-702-5188

Huq, Aziz
huq@uchicago.edu
773-702-9566

Davidson, Adam
davidsona@uchicago.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Christian A. Pierre-Canel

cpierrecanel@uchicago.edu • (239) 887-0987 • 8 East 9th Street, Chicago, IL 60605

June 11, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510-1915

Dear Judge Walker:

I am a rising third-year student at the University of Chicago Law School seeking to serve in your chambers as a clerk in 2024 or any year thereafter. My desire to clerk for you stems from my lifelong passion for public service and steadfast commitment to the pursuit of justice. As a non-traditional student who devoted six years to a career in the United States Congress prior to matriculating to law school, I believe my professional and academic record have helped cultivate skills that will complement the exceptional culture of your chambers.

Upon earning my bachelor's degree in 2015, I held several administrative and policy roles the United States Congress until the summer of 2021. This stage of my career helped me build the foundation needed to face the rigors of the legal field. From introducing legislation to address food insecurity to drafting statements for committee hearings, my time in Congress has directly affected my ability to confidently engage with my University of Chicago Law School coursework. As a student, I have honed my acumen in the law through experiential opportunities. This can be seen through my time serving as a judicial extern in the U.S. District Court for the Northern District of Illinois. Further, as a current Summer Associate at Sidley Austin, LLP, I am actively building off of my previous experiences to apply my skillset to challenging litigation matters for the firm's clients. In all, I have come to approach complex legal issues incisively with a balanced sense of creativity and practicality.

My time in law school has proven that holistic success is achieved when academic merit is matched with leadership and service. Bestowed to those who exemplify leadership, character, and initiative, I was selected as one of three Tony Patiño Fellows-Elect in the law school's Class of 2024. Further, from Hate Crime Law to Race and Criminal Justice Policy, I have enrolled in courses to learn the law with an eye towards how societal issues can be addressed by members of the legal profession. The Hon. Judge Michael Scudder of the United States Court of Appeals for the Seventh Circuit, who taught my National Security Law course, has offered to serve as a reference on my behalf if you would like to further discuss any aspects of my candidacy for this clerkship. Judge Scudder can be reached via email at Michael_Scudder@ca7.uscourts.gov.

If I am fortunate enough, clerking in your chambers would be the next chapter in my lifelong journey of serving the public through the law. I am confident that my passion and skillset can be of added value to the everyday practicalities of chamber life. It would be a privilege to work for you. Thank you for your consideration.

Sincerely,
Christian A. Pierre-Canel

Christian A. Pierre-Canel

cpierrecanel@uchicago.edu • (239) 887-0987 • 8 East 9th Street Chicago, IL 60605

EDUCATION

The University of Chicago Law School Juris Doctor <u>Honors:</u> Tony Patiño Fellowship, Fellow-Elect <u>Journal:</u> Chicago Journal of International Law, Comments Editor <u>Research Assistant:</u> Jonathan S. Masur, John P. Wilson Professor of Law, Director of the Wachtell, Lipton, Rosen & Katz Program in Behavioral Law, Finance and Economics <u>Activities:</u> Black Law Students Association, American Constitution Society, Institute of Politics Leaders of Color	Chicago, IL June 2024
University of Florida Bachelor of Arts in Political Science, <i>Cum Laude</i> <u>Activities:</u> Department of Political Science, Junior Research Fellow, Teaching Assistant	Gainesville, FL May 2015

WORK EXPERIENCE

Summer Associate, Sidley Austin, LLP <ul style="list-style-type: none"> Drafts memos and legal briefs to assist firm associates and partners in ongoing litigation and investigatory matters Supports ongoing litigation matters by conducting research for active litigation matters for the firm's clientele 	May 2023 – Aug 2023
United States District Court for the Northern District of Illinois <i>Judicial Extern, Chambers of Hon. Chief Judge Rebecca R. Pallmeyer</i> <ul style="list-style-type: none"> Conducted legal research pertaining to ongoing trials assigned to the docket of the Chief Judge Drafted memoranda and presented legal analysis on ongoing cases directly to the Chief Judge to be used for rulings 	Chicago, IL June 2022 – Sept. 2022
United States Congress <i>Senior Legislative Assistant, Office of Congressman Al Lawson (FL-05)</i> <ul style="list-style-type: none"> Managed a portfolio of over 10 policy issues including agriculture, education, and the judiciary Served as the liaison between the Congressman and the House Committee on Agriculture Drafted legislation on behalf of the Congressman to be introduced in the House of Representatives 	Washington, DC Jan 2019 – Aug 2021
Scheduler, Office of Senator Bill Nelson (FL) <ul style="list-style-type: none"> Created and managed the Senator's daily schedule consisting of over 50 official and personal engagements a week Maintained communication with foreign, federal, state, and private stakeholders to ensure the Senator's policy and political priorities were properly executed and efficiently achieved Served as a primary contact for the Senator regarding time sensitive issues, daily activities, and long-term projects Coordinated meetings for the Senator's Washington, DC staff consisting of over 40 individuals 	Mar 2018 – Jan 2019
Special Assistant, Office of Senator Bill Nelson (FL) <ul style="list-style-type: none"> Managed internal communication and paper flow between the Senator and his personal, state, and committee staff consisting of 80 individuals Collaborated with the state outreach team to implement innovative methods for the Senator to maintain connections with constituents via speeches, multimedia presentations, and interpersonal engagements 	Aug 2016 – Mar 2018
Legislative Assistant, Office of Congressman Chaka Fattah (PA-02) <ul style="list-style-type: none"> Oversaw a legislative portfolio that included foreign affairs, homeland security, and immigration Staffed the Congressman at meetings and events focusing on an array of policy issues 	May 2016 – Aug 2016

AWARDS AND AFFILIATIONS

Sidley Austin, LLP Diversity and Inclusion Scholarship Recipient	August 2022
Public Policy and International Affairs Fellowship	June 2014
Congressional Black Caucus Foundation.	May 2015
University of Florida Hall of Fame	Spring 2015

SKILLS AND INTERESTS

Languages: Haitian Creole (professional working proficiency), French (elementary proficiency)
Photography: portraiture, landscape, street, and documentary – featured in the Washington Post Express



Name: Christian A Pierre-Canel
Student ID: 12335019

Academic Program History

Program: Law School
Start Quarter: Autumn 2021
Current Status: Active in Program
J.D. in Law

External Education

University of Florida
Gainesville, Florida
Bachelor of Arts 2015

Beginning of Law School Record

Autumn 2021			Attempted	Earned	Grade
Course	Description				
LAWS 30101	Elements of the Law William Baude		3	3	173
LAWS 30211	Civil Procedure Diane Wood		4	4	172
LAWS 30611	Torts Saul Levmore		4	4	176
LAWS 30711	Legal Research and Writing Aneil Kovvali		1	1	178

Winter 2022			Attempted	Earned	Grade
Course	Description				
LAWS 30311	Criminal Law Jonathan Masur		4	4	174
LAWS 30411	Property Aziz Huq		4	4	173
LAWS 30511	Contracts Douglas Baird		4	4	175
LAWS 30711	Legal Research and Writing Aneil Kovvali		1	1	178

Law School

Spring 2022			Attempted	Earned	Grade
Course	Description				
LAWS 30712	Legal Research, Writing, and Advocacy Aneil Kovvali		2	2	178
LAWS 30713	Transactional Lawyering David A Weisbach		3	3	176
LAWS 40301	Constitutional Law III: Equal Protection and Substantive Due Process Aziz Huq		3	3	175
LAWS 43227	Race and Criminal Justice Policy Sonja Starr		3	3	177
LAWS 44201	Legislation and Statutory Interpretation Farah Peterson		3	3	177

Summer 2022

Honors/Awards
The Chicago Journal of International Law, Staff Member 2022-23

Autumn 2022			Attempted	Earned	Grade
Course	Description				
LAWS 42301	Business Organizations Anthony Casey		3	3	176
LAWS 43200	Immigration Law Amber Hallett		3	3	174
LAWS 45801	Copyright Randal Picker		3	3	176
LAWS 53704	Hate Crime Law Meets Writing Project Requirement		3	3	175
Designation: Juan Linares					
LAWS 94130	The Chicago Journal of International Law Anthony Casey		1	1	P

Winter 2023			Attempted	Earned	Grade
Course	Description				
LAWS 40101	Constitutional Law I: Governmental Structure David A Strauss		3	3	174
LAWS 45701	Trademarks and Unfair Competition Omri Ben-Shahar		3	3	181
LAWS 46101	Administrative Law David A Strauss		3	3	173
LAWS 53221	Current Issues in Criminal and National Security Law Michael Scudder		3	3	178
LAWS 94130	The Chicago Journal of International Law Anthony Casey		1	1	P



Name: Christian A Pierre-Canel
Student ID: 12335019

Law School

		Spring 2023		
Course	Description	Attempted	Earned	Grade
LAWS 41601	Evidence John Rappaport	3	3	172
LAWS 43218	Public Choice and Law Saul Levmore	3	3	173
LAWS 53485	Constitutional Procedure Ramon Feldbrin	2	0	
LAWS 94130	The Chicago Journal of International Law	1	1	P
Req	Meets Substantial Research Paper Requirement			
Designation:	Anthony Casey			

End of Law School



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Transcript Report

[Print this page](#)

Name: Christian A Pierre-Canel

Social Security Number:

UFID: 5000-9171

Date of Birth: May 02

Basis of Admission: Beginning Freshman

Residency Status: Florida Resident/Tuition (F)

Prefix & Course Number	Course Title	Course Notation	Grade	Credit Attempted	Earned Hours	Hours Carried
------------------------	--------------	-----------------	-------	------------------	--------------	---------------

Begin Undergraduate and/or Certificate Transcript

Communication & Computation complete
CLAST M 995 R 995 W 995 E 95 03/30/11

Programs Pursued

College: The College of Liberal Arts and Sciences
Undergraduate Certificate: International Relations

College: The College of Liberal Arts and Sciences
Degree Sought: Bachelor of Arts
Major: Political Science

Fall 2011

Credit by Exam

Advanced Placement

ENC 1101	Expos and Argu Writing	R	P	3.00	0.00	0.00
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IB Conversion

AMH 2010	United States to 1877		P	3.00	3.00	0.00
AMH 2020	US Since 1877		P	3.00	3.00	0.00
ART T000	Transfer ART Course		P	3.00	3.00	0.00
ART 2305C	Perceptual Drawing		P	3.00	3.00	0.00
BSC 2009L	Lab in Biol Sciences		P	1.00	1.00	0.00
BSC 2007	Cells Organisms Genet		P	3.00	3.00	0.00
ENC 1101	Expos and Argu Writing		P	3.00	3.00	0.00
ENC 1102	Argument and Persuasion		P	3.00	3.00	0.00
FRE 2220	Intermediate French 1		P	4.00	4.00	0.00
MAT T000	Transfer MAT Course		P	3.00	3.00	0.00

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Transcript Report

MGF 1106

Math for LS Majors 1

P

3.00

3.00

0.00

Grade Points: 0.00

Earned Hours: 32.00

Hours Carried: 0.00

Fall 2011

**University of Florida
The College of Liberal Arts and Sciences**

Undergraduate

Enrolled Coursework

ANT 2000	General Anthropology	A	3.00	3.00	3.00
INR 2001	International Relatns	B+	3.00	3.00	3.00
PSY 2012	General Psychology	A-	3.00	3.00	3.00
SLS 1102	Enhanc Freshman Exper	A	1.00	1.00	1.00
SPC 2608	Intro Public Speaking	A	3.00	3.00	3.00

Grade Points: 49.00

Earned Hours: 13.00

Hours Carried: 13.00

Spr 2012

**University of Florida
The College of Liberal Arts and Sciences**

Undergraduate

Enrolled Coursework

CPO 2001	Comparative Politics	B+	3.00	3.00	3.00
FOS 2001	Mans Food	A	3.00	3.00	3.00
JOU 1100	Intro to Journalism	A	1.00	1.00	1.00
POS 2041	American Federal Govt	A	3.00	3.00	3.00
PUR 3000	Princ of Public Rela	B+	3.00	3.00	3.00

Grade Points: 47.98

Earned Hours: 13.00

Hours Carried: 13.00

Sum 2012

**University of Florida
The College of Liberal Arts and Sciences**

Undergraduate

Enrolled Coursework

Session: July-August 6 Weeks

ANT 2410	Cultural Anthropology	A	3.00	3.00	3.00
AST 1002	Discover the Universe	B+	3.00	3.00	3.00

Grade Points: 21.99

Earned Hours: 6.00

Hours Carried: 6.00

Fall 2012

**University of Florida
The College of Liberal Arts and Sciences**

Undergraduate

Enrolled Coursework

IDS 4930	Intro Info Resources	A	1.00	1.00	1.00
INR 3333	Intr Interna Security	A	3.00	3.00	3.00
REL 2300	Intro World Religions	B+	3.00	3.00	3.00
SPC 2300	Intro Interpers Commu	A-	3.00	3.00	3.00
STA 2023	Intro to Statistics 1	W	3.00	0.00	0.00

Grade Points: 37.00

Earned Hours: 10.00

Hours Carried: 10.00

Spr 2013

**University of Florida
The College of Liberal Arts and Sciences**

Undergraduate

Enrolled Coursework

EDA 4930	Orientation Leaders	A	3.00	3.00	3.00
INR 3603	Theo Internatnl Rela	A	3.00	3.00	3.00

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Transcript Report

PUP 3002	Current Controversies	A-	3.00	3.00	3.00
SPA 4904	Individual Study	A	3.00	3.00	3.00
STA 2023	Intro to Statistics 1	C+	3.00	3.00	3.00

Grade Points: 54.00 Earned Hours: 15.00 Hours Carried: 15.00

Fall 2013

**University of Florida
The College of Liberal Arts and Sciences**

Undergraduate

Enrolled Coursework

AEC 3414	Leadership Developmnt	A	3.00	3.00	3.00
COM 4930	Political Comm	A	3.00	3.00	3.00
EDA 4930	Intro Student Affairs	A	3.00	3.00	3.00
IDH 4905	Hnr Reitz Scholars	A	1.00	1.00	1.00
INR 3102	Us & World Affairs	A	3.00	3.00	3.00

Grade Points: 52.00 Earned Hours: 13.00 Hours Carried: 13.00

Spr 2014

**University of Florida
The College of Liberal Arts and Sciences**

Undergraduate

Enrolled Coursework

GEO 2200	Physical Geography	B+	3.00	3.00	3.00
IDH 4905	Hnr Reitz Scholars	A	1.00	1.00	1.00
INR 4083	War/Peace World Polit	A	3.00	3.00	3.00
INR 4911	UG Res Int Relations	A	3.00	3.00	3.00
SPC 3513	Argumentation	A	3.00	3.00	3.00

Grade Points: 49.99 Earned Hours: 13.00 Hours Carried: 13.00

Fall 2014

**University of Florida
The College of Liberal Arts and Sciences**

Undergraduate

Enrolled Coursework

AEB 4283	Internat Devel Policy	A-	3.00	3.00	3.00
ECO 2013	Prin Macroeconomics	B	4.00	4.00	4.00
IDH 4905	Hnr Reitz Scholars	A	1.00	1.00	1.00
INR 4035	Rich/Poor Nations	B+	3.00	3.00	3.00
WOH 3043	The World Since 1945	A-	3.00	3.00	3.00

Grade Points: 48.01 Earned Hours: 14.00 Hours Carried: 14.00

Spr 2015

**University of Florida
The College of Liberal Arts and Sciences**

Undergraduate

Enrolled Coursework

IDS 4930	Florida Contexts	A	3.00	3.00	3.00
POS 4940	Political Internship	S	3.00	3.00	0.00

Grade Points: 12.00 Earned Hours: 6.00 Hours Carried: 3.00

Degrees Awarded

Awarded Bachelor of Arts

8/1/22, 6:41 PM

Transcript Report

Graduated May 5, 2015
Cum Laude
Major Political Science

Cumulative GPA: 3.71	Grade Points: 371.97	Earned Hours: 135.00	Hours Carried: 100.00
----------------------	----------------------	----------------------	-----------------------

Completed Undergraduate Certificate
International Relations
May 5, 2015

Cumulative GPA: 3.71	Grade Points: 371.97	Earned Hours: 135.00	Hours Carried: 100.00
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UF CUM Undergraduate GPA: 3.71	UF CUM Grade Points: 371.97	UF CUM Hours Carried: 100.00
Total Hours: 135.00	UF Earned Hours: 135.00	Transfer Hours: 0.00

End of Florida Shine Academic Records

Undergraduate: Page 1 of 1	Date Printed: August 01, 2022	Copies Requested: 1
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June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to offer a strong recommendation of Christian Pierre-Canel for a judicial clerkship. Christian is a very good student, a dynamic leader, and a tremendously thoughtful and mature individual. He is the type of student whom any professor would love to have in class and whom any law school in America would be proud to call its graduate. He is destined for a prominent career as a first-rate lawyer. In the nearer term, I am confident that he will thrive as a law clerk.

Christian was a student in my Criminal Law class in Winter 2022, his second quarter in law school, and from the first moment he spoke up it was impossible not to be impressed by him. On the second day of class, I called on him to discuss a complex and ambiguous question related to federal sentencing law. This is the type of problem that can vex even experienced law students, and here it was the beginning of Christian's second quarter. At this point, most first-year students are completely at sea. But not Christian. His answer was crisp and incisive, but also thoughtful and carefully considered. It was evident as he spoke that he was both bright and diligent. He was able to reason through a legal thicket on his feet, but he was prepared to do so because he had read and thought carefully about the subject before class. He was approaching the topic with a seriousness of purpose that few students can muster at the beginning of their time in law school. I called on Christian four other times during the course of the quarter: once to discuss the common law of premeditated murder; once to analyze the subjective element of recklessness and how it relates to intoxication; once to describe the proximate cause rules surrounding felony murder; and once to discuss the law of self-defense and the use of deadly force. His answers on these occasions—and more importantly, the ways that he reasoned through difficult hypotheticals and complicated bodies of doctrine on his feet—were highly impressive. He concluded the quarter by writing a strong and successful exam.

Perhaps more importantly, in the course of Criminal Law, and in the months afterward, I had the opportunity to get to know Christian quite well outside of class. Simply put, he is one of the most mature, thoughtful students I have ever taught. We have had one serious conversation after another about important and challenging topics—race and policing in America, the criminal legal system and how criminal law is taught in law schools, the state of legal education, Congressional politics and partisanship, and many others. Christian brought a wealth of interesting and creative ideas to every conversation. He was an active mind at work; he had thought through many of these issues in depth and arrived at his own conclusions, rather than merely parroting the popular narrative. His approach was also conscientious and profoundly thoughtful in a manner one does not always get from law students who are no more than a year or two out of college. Christian was a true adult, and he approach complex questions of law and policy with an adult's sophistication and sensibility.

Of course, this is not merely metaphor. Before he ever came to law school, Christian had a distinguished career as a staff member on Capitol Hill, working for Senator Bill Nelson and several Members of Congress. These are high-pressure environments, where everything must be perfect the first time and even small mistakes can cause a staff member to be fired in an instant. Moreover, working for Congress requires the ability to manage dozens of different tasks simultaneously while still paying close attention to the details of each individual matter. (I worked on the Hill for a year between college and law school, so I know this firsthand.) Yet it would be difficult to overstate Christian's success in this environment. To illustrate, the final position he held, Senior Legislative Assistant to Congressman Al Lawson, is a big deal—he was the senior policy aid, covering essentially every important issue area, for a Member of Congress. For Christian to have thrived in such an environment and to have risen to such professional heights is remarkable and speaks to his intelligence, his diligence, and his work ethic. I have every reason to believe that he will similarly thrive in the demanding environment of a judicial clerkship.

Christian Pierre-Canel is bright, diligent, and a true adult. He is also a genuine leader; it is no surprise that his fellow students have trusted him with important roles in numerous student organizations, including the Black Law Students Association. He is destined for a prominent career in the law, and in the shorter term I am confident that he will succeed as a judicial clerk. What is more, it is impossible to get to know him without enjoying spending time with him. He will be an asset to whichever chambers is fortunate enough to hire him. I recommend him warmly.

Sincerely,

Jonathan Masur
John P. Wilson Professor of Law

Jonathan Masur - jmasur@uchicago.edu - 773-702-5188

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to strongly recommend Christian Pierre-Cancel of the University of Chicago Law School Class of 2023, for a clerkship in your chambers. I know Christian through having taught him in two classes—Property and Constitutional Law: Equal Protection and Due Process—in his first year of law school. Christian has a very respectable law-school record, which has earned him a place on the Chicago Journal of International Law. He has repeatedly shown himself to be a valuable and effective interlocutor in class. My sense is that law-school exams don't capture his powerful intellect, and his savvy about the dynamics of how and why law impacts on real-world practices and interests. This is not perhaps surprising. Unlike many law students, Christian comes to law school after a hiatus. He worked in Congress for several years, and so has not been as steeped in the habits of exam-preparation as many of his peers. I think this has disadvantaged him on exams, although he outshines his peers in conversation and in classroom contributions. But he has been steadily improving, and has recently obtained some truly stand-out grades. For that reason, I am very confident that Christian would be an excellent law clerk. Not only would he be plainly up to the mark in terms of the sheer legal work, but he would bring a very valuable wide-angle perspective on law and its effects to your chambers. Indeed, more generally, my sense is that he would be a marvelous and uplifting presence in any professional setting. I therefore would highly recommend him to you for consideration as a law clerk.

Let me speak first to my specific experience in the classroom with Christian before addressing his larger academic record. As I noted above, I taught Christian in two first-year classes—Property and Constitutional Law: Equal Protection and Due Process. I will be candid here: He scored a respectable grade in the latter class, but a low grade in the former. (Note that I am very confident in offering a recommendation for him despite this!). To put that score in context, his grade in Property is among the lowest that Christian has obtained at law school. But I do not think it reflects his skill or intelligence. Reviewing his exams, I have the impression that Christian—especially at the beginning of his law school career—was just beginning to acquaint himself with the techniques of taking exams, and the tricks of writing for a professor. Indeed, it is important to note that Christian's grades have shown a very clear upward trajectory since the Property class. His first quarters' grades in 1L year were his weakest, and his grades at the end of the 1L year and the beginning of the 2L year were his strongest. This is a common pattern. In my experience, students who have accrued substantial work experience are often (perversely) disadvantaged by the fact that they have not been able to keep up their exam-taking skills. Beyond the context of my classes, moreover, Christian has performed solidly in a range of classes. He has obtained very solid grades, for example, in Legal Research and Writing, as well as a striking and resounding "A" in a recent trade-mark class. Looked at in the round, therefore, I think that Christian's grades more than adequately establish his strength as a lawyer.

The other factor here is Christian's performance in class. In both the Property and the Constitutional Law classes, I rely mainly on Socratic questions, only allowing a bit of discussion when it is warranted. But I quickly came to understand that Christian had keen insights into many questions of history and public policy, and that I could rely on him to make measured and always-illuminating contributions on many questions. His contributions were always smart, and often added value by drawing attention to additional facts or consideration. This same trait was evident, in addition, in the conversations I have had with him out of class. Christian is plainly richly informed and is able to mobilize his knowledge and experience with poise and effective grace. Even if he took too some time to find his bearings in exam settings, he has always had confidence and effectiveness in ordinary conversation, and has always flexed a powerful intellect in those contexts.

A few words on Chicago's grading system are warranted here. Unlike its peers, Chicago abjures grade inflation in favor of a very strict curve round a median score of 177 (which is a B in our argot). There is not large movement from the median. Because Chicago grades on a normal distribution, and because it is on the quarter system, it is possible to be very precise about where a student falls in a class as a whole. This is simply not possible with a grading system of the kind used by some of our peer schools, which are seemingly designed to render ambiguous differences between the second tier of students and the third- and fourth-tiers. Students such as Christian, who progress from lower to higher grades across the first few years of law school, are among those most disadvantaged by our grading arrangement.

Christian would bring to a clerkship, beyond his legal skills, a wealth of practical, relevant experience. He worked in Congress for six years for a number of representatives and Senators. Having spoken to him about his time on the Hill, I know that he has a large pool of law-relevant experience concerning how legislation is made and then implemented (often, by the executive rather than by the courts in the first instance). These years of experience have given him a rich well of knowledge and skill in respect to dealing with very different ideological perspectives. It means he has resources for navigating tricky interpersonal situations that other law graduates utterly lack. (It also helps that Christian is by temperament thoughtful, generous in his attitude to others, and predisposed to listening: I saw him forge relations with a range of law students on different points of the ideological spectrum. This is hardly a given, and indeed quite the challenge, these days. From conversations with him, it is my sense that this capacity bubbles up out of his experience growing up in a Haitian household in southwest Florida—and being seen as "Haitian" in some contexts, and "Black" in others. This split in social contexts gave him a sensitivity, I think, to difference that remains valuable today). He has deepened these skills while at Chicago by working for the Hon. Rebecca Pallmeyer over the summer of 2022, and by acquiring a much-sought place on one the handful of journals at the law school, the Chicago Journal of International Law. He

Aziz Huq - huq@uchicago.edu - 773-702-9566

has also worked with the Institute of Politics, which is part of the larger university, mentoring other students.

Based on all this evidence, I offer my strong support for Christian's application. He will be a terrific and thoughtful clerk, who will add much to a chambers. I would be happy to answer any questions you have about his candidacy, and can be reached at your disposal at huq@uchicago.edu.

Sincerely,

Aziz Huq

Frank and Bernice J. Greenberg Professor of Law

Aziz Huq - huq@uchicago.edu - 773-702-9566

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Christian Pierre-Canel for a clerkship in your chambers. I got to know Christian as the advisor for his comment for the Chicago Journal of International Law. Christian had an extensive career as a legislative aid in Congress before coming to law school, and that experience shows in both his work and in conversing with him. He has a keen ability to think about a problem from numerous angles and at times his writing has a clarity and concision that few law students can match.

Perhaps the most important skill that his experiences have given him though is persistence. As his transcript suggests, Christian did not exactly take to law school classes like a fish to water. But instead of resigning himself to that fate, he seemingly sought as much advice as he could get. Indeed, the first time I met him was during his 1L year in this very context. The then-BLSA Academic Chair was a former student of mine and recommended that he talk to me about exam strategy. While I hope that conversation was fruitful for him, I'm afraid I didn't have too much to add to the panoply of other advice he had already sought from not only other students, but from his other professors with whom he went over his past exams. Those professors, he explained, had largely said that his weakness was in test-taking and not legal knowledge. My experience as his comment advisor fully confirmed this. In conversing with Christian, it is immediately obvious that he doesn't lack legal knowledge or an ability to apply legal doctrine. As we talked through his comment, he would easily explain intricacies of UN procedure and how they might affect his proposals for an international law solution to global policing failures.

That is why I have not been surprised to see the upward trajectory in his transcript. Christian has the intellectual ability to succeed as a law clerk in spades, and he combines that with a willingness to recognize his weaknesses and a seemingly indefatigable desire to address them.

I happily recommend him for a clerkship in your chambers.

Sincerely,

Adam Davidson

Adam Davidson - davidsona@uchicago.edu

Christian A. Pierre-Canel

cpierreacanel@uchicago.edu • (239) 887-0987 • 8 East 9th Street, Chicago, IL 60605

University of Chicago Law School

National Security Law

Winter Quarter 2023

**Instructor: Hon. Judge Michael Scudder, United States Court of Appeals for the
Seventh Circuit**

Paper Instructions: Students were instructed to draft a Supreme Court opinion on a topic based on the themes discussed in class. Students were told to form their own fact pattern and to be creative while applying real law to the issues. The legal analysis was also able to include legal policy considerations.

Supreme Court of the United States

Peterson v. Miles

Justice Levmore delivered the opinion of the Court in which The Chief Justice, Justice Baude, Justice Masur, Justice Wood, Justice Picker, and Justice Weisbach join.

In the thirty years since the September 11 Attacks on our nation’s soil, the Court has spilled relatively little ink over the very real concerns arising from United States (U.S.) citizens who seek to align themselves with non-state actors against our nation in the ever-mutating Global War on Terror. Now, we are asked to determine whether the Federal government violated petitioner Mitchell Peterson’s Fifth Amendment right to Due Process by detaining him indefinitely upon being declared an “enemy combatant” of the U.S. pursuant to 50 U.S.C. §1543 (hereinafter Title X or Title X of the Authorization for Use of Military Force of 2022).

In prior proceedings the United States Court of Appeals for the Eleventh Circuit held for the respondent-appellee; the Federal government. In doing so, the Eleventh Circuit argued that United States District Court for the Southern District of Florida erred in ruling that the petitioner-appellant’s Due Process rights were violated because of his inability to challenge the circumstances of his arrest and subsequent detention at the Fort Jefferson Naval Base in the Dry Tortugas National Park off the coast of Key West, Florida. We granted the petitioner’s writ of certiorari to address the sensitive nature of this serious claim of civil rights violations by the Federal Government especially as our nation’s Global War on Terror prepares to enter its third decade.

We find error in the Eleventh Circuit’s analysis of the law as applied to this case and vacate and remand their judgement for further proceedings. Today, nearly 20 years after ruling in favor of the petitioner in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), we once again affirm the constitutional protection of due process that all citizens are afforded by the Fifth Amendment.

Recent global occurrences remind us of that physical and existential vulnerabilities of terrorism are alive and well. These threats are often products of long seeded cultural, religious, and political disputes that have formed well before the founding of our nation. Moreover, we acknowledge that the dangers of these threats do not always stem from outside of our borders but are often seeded within our very own heartland. However, regardless of the origins of these ills, no label placed on an individual by the Executive branch may strip the constitutional rights bestowed to those that are born or naturalized into the status of “citizen” of the United States of America.

Since 2020, the world has witnessed an increase in hostilities originating from a network of pro-Russian supremacy terrorist groups known collectively as “Odin-Russe”.¹ Their aim is to support the Russian Federation’s attempts of colonizing weaker nation-states by instigating conflicts to destabilize the civil and economic status of the developed world.

¹ The term Odin-Russe is a self-coined moniker combing the root word for Russia and Mon to mean “One Russia”.

Tragically, on September 27, 2022, Odin-Russe claimed responsibility for the mass biological weapon attack on the island of Tongatapu in the Pacific Kingdom of Tonga. Within two weeks, 50,000 of the island's 75,000 residents were killed as a result of the attack. Recently, the decades long increases in global temperatures and atmospheric moisture levels have enabled humans to contain and control several deadly species of the parasitic genus of fungi known as cordyceps.² The lethality and high R_0 ³ of cordyceps has led the World Health Organization to call for a global ban on all uses of the parasitic fungus in concentrated forms. The aim of this international moratorium is to prevent any potential future outbreaks.

In the face of this ban, fringe terror organizations such as Odin-Russe have found no issue using cordyceps as a part of their arsenal to harm the global community. Following the September 27th attack on Tonga, the United Nations (UN) was forced to recruit member-states to establish a 15,000 square mile blockade around the archipelago island to prevent the biological threat from spreading. Further, the UN General Assembly has formally condemned the Odin-Russe terrorist attack and their ideology.

Domestically, the Federal Government spared little time in preparing defensive measures to protect the homeland against similar biological assaults in the name of the

² Koral Jedrejko et. al, *Effect of Cordyceps spp. and Cordycepin on Functions of Bones and Teeth and Related Processes: A Review*, NATIONAL INSTITUTES OF HEALTH: NATIONAL LIBRARY OF MEDICINE, (Dec. 27, 2022).

³ Paul L. Delamater et. al, *Complexity of the Basic Reproduction Number (R_0)*, EMERGING INFECTIOUS DISEASES, CENTER FOR DISEASE CONTROL AND PREVENTION, 25 1, Jan. 2019

Odin-Russe cause. The Department of Defense has also positioned members of the U.S. Armed Forces in strategic locations around the globe in case offensive measures against the terror network are called for. The bulk of the U.S.'s anti-Odin-Russe legislative package has mirrored the Authorization for the Use of Military Force of 2001 in response to the September 11 Attacks that took the lives of 2,996 individuals in four coordinated attacks across the northeastern United States.

On November 1, 2022, Congress passed the Authorization for the Use of Military Force of 2022 (AUMF 2022). Upon enactment, the AUMF 2022 granted the President authority to “use all necessary and appropriate force against those... she determines committed or aided the terrorist attacks of September 27, 2022 in order to prevent any future acts of international terrorism against the United States...”

At issue with the case before us is Title X of the law. Subject to the AUMF of 2022 and 50 U.S.C. ch. 33 (*War Powers Resolution*), Title X grants the President and Secretary of Defense the power to categorize any person determined to partake in or substantially support the planning of any future acts of international terrorism against the United States in furtherance of the Odin-Russe cause as “enemy combatants”.

Petitioner Mitchell Peterson, a United States citizen born in Toledo, OH, grew sympathetic to the Odin-Russe cause. Department of Defense (DoD) officials allege that Mitchell became active in pro-Russian social media networks on the dark web as early as 2020. Upon the Russian invasion of Ukraine, Mitchell’s fervor for the cause led him to

leave his home in Ohio and travel to Sevastopol, Crimea in the winter of 2022. During the 2010's, Sevastopol, which has been under Russian occupation since 2014, became a magnet for Odin-Russe recruits seeking to join the cause and lend their minds and bodies to the mission of destabilizing the developed world in hopes the Russian Federation may regain homogeneity.

Following a six-month training in tactical warfare, mycology (the study of fungi), and ballistics, petitioner was sent to the Republic of Haiti in preparation for another September 27 style cordyceps attack. Odin-Russe realized the geo-political importance of Hispaniola's location in the Caribbean Sea. They believed that successfully causing a mass causality bio-terror attack in Haiti and the Dominican Republic would both weaken the economic independence of other Latin American countries and strain the physical and economic resources of Group of Seven nations that have strong ties to the nations – such as the United States, France, and Brazil.

On February 15, 2023, United States and allied forces which were previously deployed in Haiti arrested petitioner and other persons suspected of planning an Odin-Russe sponsored terrorist attack in the capital city of Port-au-Prince. Petitioner was subsequently detained and transported to Fort Jefferson Naval Base off the coast of Key West, Florida and was designated as an enemy combatant pursuant to Title X of the AUMF 2022. Upon United States officials gaining knowledge that Mitchell was a United States citizen, he was transported to a maximum-security detention facility on U.S. soil

at Homestead Airforce Base in Miami-Dade County, Florida. Petitioner has remained at this location throughout the course of the litigation at issue.

Peterson's daughter, Maria Jackson (*nee* Peterson), filed the petition for a writ of habeas corpus that is before us under 28 U.S.C. §2241 in the United States District Court for the Southern District of Florida. In the petition, Jackson alleges that since her father was detained and placed under custody of the United States Federal Government, she has not been able to communicate with him. Further, the petition for the writ of habeas corpus alleges that Peterson has been denied access to legal counsel and that his detention is in violation of both 18 U.S. Code §4001 (the *Non-Detention Act of 1971*) and the petitioner's Due Process rights under the Fifth Amendment of the Constitution.

The respondent argues that subject to the War Powers Resolution and our decision in *Ex Parte Quirin*, 317 U.S. 1 (1942), an enemy combatant may be detained indefinitely by the United States Government. Respondent claims in their brief that Mitchell's detention is "mission critical" to the national interest of thwarting dangers stemming from Odin-Russe's ongoing attempts to cause the United States, her allies, and their mutual interest's harm. Therefore, the respondent states that to remove the petitioner from federal detention would allow our enemies to regain a vital asset to their efforts to harm the United States, her allies, and their mutual interests.

II. Issues on Appeal

Now, before us we are asked to answer whether the lack of counsel provided to Peterson is a violation of his Fifth Amendment right to Due Process under the constitution. Further, there have been changes in the text between then AUMF of 2001 and the AUMF of 2022, and subsequently the Federal Government's argues that the threat from Odin-Russe is different than that from Al-Qaeda and related organizations. Consequently, this Court has also decided to answer whether citizens who qualify as enemy combatants pursuant to Title X of the AUMF 2022 can be legally subjected to indefinite detention by the Federal Government.

III. Discussion of the law with additional facts as needed

The Due Process Clause of the Fifth Amendment to the Constitution states that no person shall "... be deprived of life, liberty, or property without due process of the law" (U.S. Const. amend. V). We have repeatedly affirmed the right of all people to have access under appropriate measures to challenge the government's attempt to deprive them of their personal freedom or property (*See Murray's Lessee v. Hoboken Land Improvement Co.*, 59 U.S. 19 How. 272 (1856), *Ng Fung Ho v. White*, 259 U.S. 276 (1922), *Moore v. Demspey*, 261 U.S. 86 (1923)).

This body has never held that the government cannot deprive a person or entity of their livelihood or property. Rather, it is the duty of this body to ensure that the state is responsible for overcoming the high burden of proving that their mechanisms to

impose such dispossession on an individual does not surpass the individual's Fifth Amendment protections.

Both in its briefs and during oral arguments before the Court, the respondent vigorously defends the Federal Government's detention of Peterson by painting a vivid image of the horrors our world faces in the midst of rising tribalism under the guise of the Odin-Russe cause. A cause in which the Federal Government alleges that Peterson has claimed allegiance to. Make no mistake, this body understands the gravity of the current state of global affairs that we find ourselves in. Yet, as we have conducted ourselves during the First and Second World Wars, the Vietnam War, and the Global War on Terrorism, the Court's role is not one of support for the political or foreign policy views of the President or leaders of Congress at any given time. Instead, the Court is charged with maintaining the rule of law and upholding the Constitution as our political branches seek to steer our nation to calmer seas through policy in accordance with the will of the electorate.

With that being said, instances do arise when legitimate interests between the government's official action and an individual's life or property are at odds with one another. In these situations, the judiciary is called to apply a balancing test under *Matthews v. Eldridge*, 424 U.S. 319 (1976) to determine if the private party has received adequate due process (see *Shalala v. Illinois Counter on Long Term Care, Inc.* 529 U.S. 1 (2000), *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), *U.S. v. Salerno*, 481 U.S. 739 (1987)). The

three-factor *Matthews v. Elridge* test asks us to assess: 1. the importance of the interest at stake; 2. the risk of erroneous deprivation of the interest because of the procedures used, and the probative values of additional procedural safeguards; and 3. the interest of the government. We agree with both the respondent and dissent that the interest of our nation defending itself against this global threat is of grave importance. However, we do not find merit in the petitioner's deprivation of counsel or other formal legal guarantees afforded to all persons, especially citizens of the U.S., as being the proper procedure to address this interest.

Further, the respondents have failed to give a reasonable explanation for how granting Peterson his right to counsel would directly interfere with—let alone encumber—our nation protecting its populace, homeland, and interests against the adversaries drafted in the text of the AUMF 2022. Moreover, we struggle to find a legitimate basis in the government's interest in detaining a United States citizen, indefinitely, outside of the bounds of our nation's criminal justice system simply because the Executive has declared the individual to be an enemy combatant.

In the final step our *Matthews v. Elridge* analysis, the Court finds it imperative for posterity's sake, to reiterate that we did not grant a writ of certiorari for the case at issue to examine the culpability of the petitioner for the crimes that the government alleges he has committed. Rather, a writ of certiorari was granted for a narrow, albeit mighty objective: merely to decide whether the petitioner's rights have been abridged

via the circumstances of his current detention. The very rights that would grant the petitioner sufficient access to a proper process to defend himself against any charges are the very same rights that legitimize the Federal Government's power to prove that their charges are warranted. With that being said, we find little support for the means by which the government has deprived the petitioner as a United States citizen on United States soil as adequate and proper.

A citizen's lack of legal counsel will not better protect the United States and her interests. A detained citizen's complete inability to communicate with his family (subject to proper surveillance and security measures) will not save us from future bio-terror attacks. The Federal Government has failed to overcome the burden needed to show that Peterson being stripped of his Fifth Amendment Due Process right is validated by their legitimate interest in protecting the United States in accordance with Title X of the AUMF 2022. Today will not be the day that this Court begins to resolve that enforcement of a statute supersedes our adherence to the Constitution's mandate for us to protect the freedoms of all citizens afforded through the Bill of Rights.

Next, respondent claims that the government's indefinite detention of Peterson pursuant to Title X of the AUMF 2022 is authorized under Congress's continual passage of the *National Defense Authorization Act* (NDAA). They argue that the annual enactment of the NDAA translates directly into Congress's implicit approval of the President's authority to use the whole of government to conduct military operations against

terrorists and nations supporting them. Subsequently, respondents infer that this whole of government approach to combating Odin-Russe warrants Peterson's indefinite detention due to his status as an enemy combatant under the AUMF 2002.

Respondent points to three legal documents that skew the historical gloss of U.S. foreign policy towards granting the Executive near plenary power in this realm: a 2001 Memorandum Opinion to the President from the Department of Justice's Office of Legal Counsel (OLC), and our ruling in *Ex parte Quirin*, and Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. V. Sawyer*, 343 U.S. 579 (1952). This Court does not question the good faith effort that the government makes in raising these defenses, however we do have grave concern over their application to the case before us.

The government first refers to a 2001 OLC memorandum submitted to the President outlining the parameters of his authority to combat global forces of ill intent in the War on Terror. The memorandum asserts that no statute "can place any limits on the President's determinations as to any terrorist threat... and the nature of the response."⁴ The memorandum closes by claiming that decisions regarding responses to terrorism "under our Constitution, are for the President to make alone".⁵ We agree that Presidential power conferred upon the Office of the Executive cannot be diminished by

⁴ John C. Yoo, Dept. Asst. Attorney General, THE PRESIDENT'S CONSTITUTIONAL AUTHORITY TO CONDUCT MILITARY OPERATIONS AGAINST TERRORISTS AND NATIONS SUPPORTING THEM, DEPARTMENT OF JUSTICE, OFFICE OF LEGAL COUNSEL, Sept. 25, 2001.

⁵ *Id.*

the ebbs and flows of the enactment and repeal of statutes. However, more importantly, we do not and cannot concur with the notion that these same powers may diminish the rights of a United States citizen bestowed by the Constitution under the guise of defense against global threats.

The Federal Government then returns to *Ex parte Quirin* to support the notion that Peterson's indefinite detention without adequate due process is warranted as a result of his alleged corroboration in unlawful wartime activity against the United States. Still, the government fails to provide rationale for a critical difference between the facts of *Ex parte Quirin* and the case before us today: the citizenship status of the enemy combatants. In *Ex parte Quirin*, the alleged enemy combatants were not United States citizens. These German saboteurs's detention under the jurisdiction of a military tribunal as opposed to adjudicating the charges against them in Article III courts was justified under the War Powers of the Executive under the law of war.

However, in the case before us, Peterson's status as a citizen of our nation affords him access to our courts that was not required in *Ex parte Quirin*. Whether Peterson is an enemy combatant or not pursuant to Title X and whether he has violated our laws by pledging allegiance against our nation shall be questions for a criminal proceeding under the federal judiciary of the United States (see *Boumediene v. Bush*, 553 US 723 (2008)). These questions are of utmost importance and the resolution of which may

deprive a citizen of their life, liberty, or property. Therefore, we hold that they must be subjected the scrutiny of an Article III court.

Finally, the respondent claims that Justice Robert Jackson's famous concurrence in *Youngstown* paves the path for the Executive to administer the type of extrajudicial deprivation of due process of a citizen that this court holds as unconstitutional. They argue that Title X of the AUMF 2022 is an appropriate legal measure under the Presentment Clause of the Constitution. Moreover, respondent maintains that the fact that Title X has been administered under Presidential power granted by a congressional act provides the Court little deference to examine it under judicial review.

While history has repeatedly kept Justice Jackson's seminal *Youngstown* categorical spheres of Presidential power relevant, this court has and will continue to apply as much deference as we see fit to ensure the law is properly followed by all parties in all cases that come before us. In this case, to assume that simply because Congress passed the AUMF 2022, and that the President signed it into law means that it is free from review by Article III courts does not reflect well on the respondent's reverence for our federal system of checks and balances.

At best, it appears that the government has conflated this petition for writ of habeas corpus as a matter of foreign policy for which the historical gloss of our federal powers has been gracious to the Executive. Yet, this simply is not the case. Though the petitioner may be involved in dealings that implicate foreign actors and though the

allegations against him are of grave national security concerns, his attempt to stand before our justice system as a citizen rises above all other concerns.

IV. Conclusion

In closing, this court reaffirms that even in times of war, chaos, and global unrest, the United States Federal Government must adhere to the constitutional principles that serve as the backbone of our nation's perpetual pursuit of truth and justice. For this pursuit in itself is essential to our triumph over insidious forces that threaten our sovereignty both within and beyond our borders. No further consideration of this issue is necessary at this moment.

The judgement of the United States Court of Appeals for the Eleventh Circuit is vacated, and the case is remanded for further proceedings.

Applicant Details

First Name	Simon
Last Name	Poser
Citizenship Status	U. S. Citizen
Email Address	sposer@law.gwu.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>2030 F Street</div> <div>City</div> <div>Washington</div> <div>State/Territory</div> <div>District of Columbia</div> <div>Zip</div> <div>20006</div> </div> </div>
Contact Phone Number	7186500272

Applicant Education

BA/BS From	Haverford College in Pennsylvania
Date of BA/BS	May 2019
JD/LLB From	The George Washington University Law School
	https://www.law.gwu.edu/
Date of JD/LLB	May 19, 2024
Class Rank	25%
Law Review/Journal	Yes
Journal(s)	Federal Communications Law Journal - The Tech Journal
Moot Court Experience	Yes
Moot Court Name(s)	Moot Court Board

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	Yes
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Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

Tillipman, Jessica
jtillipman@law.gwu.edu
202-994-2896

Lerner, Renée
rlerner@law.gwu.edu
(703) 528-8155

Melinda, Roth
melindaroth@law.gwu.edu

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

SIMON AUGUST POSER

2030 F Street NW, Apt 509, Washington, D.C. 20006 · (718)-650-0272 · sposer@law.gwu.edu

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a law student at The George Washington University Law School and will be graduating in May 2024. I am writing to apply for a judicial clerkship with you for the 2024-2025 Term.

I am especially interested in applying to your chambers for two reasons. First, I am firmly committed to pursuing a career in litigation in the Washington D.C. area. I worked as a paralegal at Covington & Burling for two years prior to attending GW Law, and it has made me certain that litigation is what I want to dedicate my legal career to. I want to gain experience working for a federal district court judge to develop my research and writing skills, as well as work on trials. I have worked on litigation matters in a wide variety of roles in both private practice and in government, and believe these experiences give me a unique and well-rounded perspective in analyzing legal issues.

Second, Your Honor's prosecutorial experience deeply resonates with me because it is a high aspiration of mine to serve one day as an Assistant United States Attorney. I was able to intern in the U.S. Attorney's Office for the Eastern District of New York in the summer of 2022, and it has inspired me to pursue a career in public service after law school as a prosecutor. I believe getting experience as a law clerk would be invaluable in improving my understanding of the criminal process, and will make me a better prosecutor in the future.

I believe all these experiences will make me a strong judicial law clerk in your chambers next year, and I know and appreciate the value a judicial clerkship will add to my career. I have attached my resumé, transcript, writing sample and references for your review. Thank you for your time and consideration.

Respectfully,
Simon August Poser

SIMON AUGUST POSER

2030 F Street NW, Apt 509, Washington, D.C. 20006 · (718)-650-0272 · sposer@law.gwu.edu

EDUCATION

The George Washington University Law School Washington, D.C.
J.D. Expected, GPA: 3.630 May 2024

Honors: Thurgood Marshall Scholar (Top 16% to 35% of class, to date)
Dean's Recognition for Professional Development
Journal: *Federal Communications Law Journal – The Tech Journal* (Associate)
Note: *Living in Private: Reinvigorating the Fourth Amendment in the Digital Era by Providing Clear and Consistent Rules to Courts* (Publication Forthcoming)
Skills Boards: Moot Court Board (Member); Mock Trial Board (Member)
Activities: Student Tutor (Constitutional Law I, Criminal Law, Criminal Procedure, Evidence, Property); Anti-Corruption and Compliance Association (President, 2022-2023 term); Tech Law Students Association (Member); SBA Mentor; Mock Trial Coach

Haverford College Haverford, PA
B.A., Political Science, GPA: 3.278; Major GPA: 3.83 May 2019
Activities: *The Clerk Newspaper* (News Editor); Student's Council (Junior Class Representative)

EXPERIENCE

Civil Fraud Section, United States Department of Justice Washington, D.C.
Incoming Legal Intern January 2024—April 2024

The Honorable Timothy J. Kelly, District Judge, D.C. District Court Washington, D.C.
Incoming Judicial Intern September 2023—December 2023

Seeger Weiss, LLP New York, NY/Ridgefield Park, NJ
Summer Associate June 2023—August 2023

- Researched caselaw, wrote multiple sections of reply brief in support of motion to compel discovery
- Assisted in preparation for deposition of marketing executive at Fortune 500 company
- Briefed attorneys on issues representing in-house counsel-whistleblower in False Claims Act case

The Honorable Jason Park, Associate Judge, D.C. Superior Court Washington, D.C.
Judicial Intern January 2023—April 2023

- Conducted legal research and made recommendations for cases before Judge Park
- Drafted orders and bench memoranda, made case binders for the judge's use in hearings and trials

U.S. Attorney's Office for the Eastern District of New York, Criminal Division Brooklyn, NY
Legal Intern, Securities Fraud and Organized Crime/Gangs Sections May 2022—August 2022

- Conducted legal research, wrote motions and memoranda on issues relating to criminal procedure, evidentiary disputes, statutory interpretation, and other questions of criminal law
- Reviewed documents and assisted in preparation for proffers in securities fraud investigation

Covington and Burling, LLP Washington, D.C.
Litigation Paralegal September 2019—July 2021

- Provided logistical support to lawyers for litigation and investigative matters in various practice groups
- Served document productions, maintained review databases, and assisted in document review
- Edited, cite checked, and filed numerous briefs, motions, and other pleadings

INTERESTS

- Competitive tennis player (15 years); hiking in national parks (7 visited overall); art history; theater

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

Gwid : G32358278

Date of Birth: 19-MAY

Date Issued: 06-JUN-2023

Record of: Simon A Poser

Page: 1

Student Level: Law
Admit Term: Fall 2021Issued To: SIMON POSER
SPOSER@GWU.EDU

REFNUM:5731032

Current College(s): Law School
Current Major(s): Law

SUBJ NO COURSE TITLE CRDT GRD PTS

GEORGE WASHINGTON UNIVERSITY CREDIT:

Fall 2021

Law School
Law

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
LAW 6202	Contracts Chatman	4.00	B-	
LAW 6206	Torts Schoenbaum	4.00	A-	
LAW 6212	Civil Procedure Berman	4.00	B+	
LAW 6216	Fundamentals Of Lawyering I Rabe	3.00	B+	
Ehrs	15.00	GPA-Hrs	15.00	GPA 3.244
CUM	15.00	GPA-Hrs	15.00	GPA 3.244

Spring 2022

Law School
Law

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
LAW 6208	Property Nunziato	4.00	A-	
LAW 6209	Legislation And Regulation Schaffner	3.00	B	
LAW 6210	Criminal Law Cottrol	3.00	A-	
LAW 6214	Constitutional Law I Morrison	3.00	A-	
LAW 6217	Fundamentals Of Lawyering II Pusateri	3.00	A	
Ehrs	16.00	GPA-Hrs	16.00	GPA 3.604
CUM	31.00	GPA-Hrs	31.00	GPA 3.430
Good Standing				
DEAN'S RECOGNITION FOR PROFESSIONAL DEVELOPMENT				

Fall 2022

Law School
Law

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
LAW 6230	Evidence Saltzburg	4.00	A	
LAW 6360	Criminal Procedure Lerner	3.00	A+	
LAW 6393	First Amendment - Religion Tuttle	3.00	A-	
LAW 6683	College Of Trial Advocacy Saltzburg	3.00	A	
Ehrs	13.00	GPA-Hrs	13.00	GPA 4.000
CUM	44.00	GPA-Hrs	44.00	GPA 3.598
Good Standing				
THURGOOD MARSHALL SCHOLAR				
TOP 16%-35% OF THE CLASS TO DATE				

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO COURSE TITLE CRDT GRD PTS

Spring 2023

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
LAW 6250	Corporations	4.00	A	
LAW 6252	Securities Regulation	3.00	B+	
LAW 6511	Anti-Corruption And Compliance	2.00	A-	
LAW 6668	Field Placement	2.00	CR	
LAW 6669	Judicial Lawyering	2.00	A	
Ehrs	13.00	GPA-Hrs	11.00	GPA 3.758
CUM	57.00	GPA-Hrs	55.00	GPA 3.630
Good Standing				
THURGOOD MARSHALL SCHOLAR				
TOP 16%-35% OF THE CLASS TO DATE				

Fall 2022

Law School
Law

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
LAW 6657	Fed Communication Law	1.00		
Jrl Note				
Credits In Progress:		1.00		

Spring 2023

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
LAW 6657	Fed Communication Law	1.00		
Jrl Note				
Credits In Progress:		1.00		

Fall 2023

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
LAW 6218	Prof Responsibility & Ethics	2.00		
LAW 6362	Adjudicatory Criminl Procedure	3.00		
LAW 6364	White Collar Crime	3.00		
LAW 6380	Constitutional Law II	4.00		
LAW 6413	Federal Communications Law Jrn	1.00		
LAW 6644	Moot Court - Van Vleck	1.00		
LAW 6652	Legal Drafting	2.00		
Credits In Progress:		16.00		

***** TRANSCRIPT TOTALS *****

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	57.00	55.00	199.67	3.630
OVERALL	57.00	55.00	199.67	3.630

***** END OF DOCUMENT *****



Katie Cloud
Katie Cloud
Interim University Registrar

This transcript processed and delivered by Parchment

Office of the Registrar
THE GEORGE WASHINGTON UNIVERSITY
Washington, DC 20052

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DESIGNATION OF CREDIT

All courses are taught in semester hours.

TRANSFER CREDIT

Transfer courses listed on your transcript are bonafide courses and are assigned as advanced standing. However, whether or not these courses fulfill degree requirements is determined by individual school criteria. The notation of TR indicates credit accepted from a postsecondary institution or awarded by AP/IB exam.

EXPLANATION OF COURSE NUMBERING SYSTEM

All colleges and schools beginning Fall 2010 semester:

1000 to 1999	Primarily introductory undergraduate courses.
2000 to 4999	Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work.
5000 to 5999	Special courses or part of special programs available to all students as part of ongoing curriculum innovation.
6000 to 6999	For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office.
8000 to 8999	For master's, doctoral, and professional-level students.

All colleges and schools except the Law School, the School of Medicine and Health Sciences, and the School of Public Health and Health Services before Fall 2010 semester:

001 to 100	Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit.
101 to 200	Designed for junior and senior students. With appropriate approval, specified courses may be taken for graduate credit by completing additional work.
201 to 300	Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean.
301 to 400	Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. School of Business – Limited to doctoral students.
700s	The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors.
801	This number designates Dean's Seminar courses.

The Law School

Before June 1, 1968:

100 to 200	Required courses for first-year students.
201 to 300	Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval.
301 to 400	Advanced courses. Primarily for master's candidates. Open to LL.B or J.D. candidates with approval.

After June 1, 1968 through Summer 2010 semester:

201 to 299	Required courses for J.D. candidates.
300 to 499	Designed for second- and third-year J.D. candidates. Open to master's candidates only with special permission.
500 to 850	Designed for advanced law degree students. Open to J.D. candidates only with special permission.

School of Medicine and Health Sciences and

School of Public Health and Health Services before Fall 2010 semester:

001 to 200	Designed for students in undergraduate programs.
201 to 800	Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences.

CORCORAN COLLEGE OF ART + DESIGN

The George Washington University merged with the Corcoran College of Art + Design, effective August 21, 2014. For the pre-merger Corcoran transcript key, please visit <http://go.gwu.edu/corcorantranscriptkey>

THE CONSORTIUM OF UNIVERSITIES OF
THE WASHINGTON METROPOLITAN AREA

Courses taken through the Consortium are recorded using the visited institutions' department symbol and course number in the first positions of the title field. The visited institution is denoted with one of the following GW abbreviations.

AU	American University	MMU	Marymount University
CORC	Corcoran College of Art & Design	MV	Mount Vernon College
CU	Catholic University of America	NVCC	Northern Virginia Community College
GC	Gallaudet University	PGCC	Prince George's Community College
GU	Georgetown University	SEU	Southeastern University
GL	Georgetown Law Center	TC	Trinity Washington University
GMU	George Mason University	USU	Uniformed Services University of the Health Sciences
HU	Howard University	UDC	University of the District of Columbia
MC	Montgomery College	UMD	University of Maryland

GRADING SYSTEMS

Undergraduate Grading System

A, Excellent; B, Good; C, Satisfactory; D, Low Pass; F, Fail; I, Incomplete; IPG, In Progress; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; P, Pass; NP, No Pass; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the I is replaced by the final grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.

Effective Fall 2003: The grading symbol R indicates need to repeat course.

Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I/ and the grade.

Effective Fall 1987: The following grading symbols were added: A-, B+, B-, C+, C-, D+, D-.

Effective Summer 1980: The grading symbols: P, Pass, and NP, No Pass, replace CR, Credit, and NC, No Credit.

Graduate Grading System

(Excludes Law and M.D. programs.) A, Excellent; B, Good; C, Minimum Pass; F, Failure; I, Incomplete; IPG, In Progress; CR, Credit; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 1994: The following grading symbols were added: A-, B+, B-, C+, C- grades on the graduate level.

Law Grading System

A+, A, A-, Excellent; B+, B, B-, Good; C+, C, C-, Passing; D, Minimum Pass; F, Failure; CR, Credit; NC, No Credit; I, Incomplete. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

M.D. Program Grading System

H, Honors; HP, High Pass; P, Pass; F, Failure; IP, In Progress; I, Incomplete; CN, Conditional; W, Withdrawal; X, Exempt; CN/P, Conditional converted to Pass; CN/F, Conditional converted to Failure. Through Summer 2014 the I was replaced with I and the final grade.

For historical information not included in the transcript key, please visit

<http://www.gwu.edu/transcriptkey>

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The George Washington University Law School
2000 H Street NW
Washington, DC 20052

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to express my enthusiastic support of Simon Poser's application to serve as one of your law clerks. His intelligence, dedication and maturity make him a strong candidate for a judicial clerkship, and he would be an asset to you and your chambers.

I have worked closely with Simon in his capacity as the president of the Anti-Corruption and Compliance Association, of which I am the faculty advisor. The Anti-Corruption and Compliance Association is a student group at GW Law School that organizes and promotes anti-corruption and compliance events and opportunities for students.

Over the past year, Simon has demonstrated exceptional leadership and professionalism in the performance of his duties. For example, during the Spring 2023 semester, Simon organized a high-profile event featuring a large panel of senior attorneys. There were numerous logistical matters that he had to manage for this event to run smoothly, and Simon did an incredible job (while also handling his many other academic obligations). I'm proud to say that the event resulted in record turnout by the student body and phenomenal feedback from the practitioner participants. I was truly impressed by the quality of the program, the number of student attendees, and Simon's outstanding organizational and communication skills. Moreover, in his role as the group's president, he routinely managed a large group of student leaders and demonstrated, repeatedly, that he has excellent management skills and a keen ability to collaborate effectively with his peers.

Simon also took my Anti-Corruption and Compliance course last year, so I had the chance to evaluate his academic coursework, which was very good. Simon routinely contributed to class discussions, attended office hours, and demonstrated enthusiasm for the subject matter by engaging with material outside of the assigned readings – often sharing information with me about cases or current events that touched upon the subject matter of the course. Simon's performance on his take-home exam was also very good. His exam demonstrated not only that he knew and understood the law, but that he could apply it persuasively to a complicated fact pattern. Simon also did an excellent job completing an in-class exercise in which he had to develop corporate compliance enhancements for a company and then "pitch" the enhancements to an expert practitioner. Simon received excellent feedback from the attorney evaluating his performance, who commented on his strong public speaking skills and persuasive written recommendations.

Although Simon's academic credentials alone make him a strong candidate for this position, I should note that Simon is someone whom you would enjoy having in your chambers. He is personable, friendly, and has the maturity and professionalism to thrive. I expect that, upon graduation, he will prove himself to be a consummate professional.

As you select your clerks this year, I hope you will consider Simon as a prime candidate. If I can answer any questions you might have about Simon, please do not hesitate to call me at (202) 994-2896. I thank you for your consideration.

Best Regards,

Jessica Tillipman
Assistant Dean for Government Procurement Law Studies
The George Washington University Law School
2000 H Street, N.W.
Washington, D.C. 20052
Tel (202) 994-2896
jtillipman@law.gwu.edu

Jessica Tillipman - jtillipman@law.gwu.edu - 202-994-2896

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is a great pleasure to recommend Simon Poser for a clerkship in your chambers. Simon is deeply thoughtful about the law and his career. He has an intense interest in criminal law and procedure and is determined to be an Assistant U.S. Attorney. He has taken time to learn about the job, through internships and other professional opportunities. He wants to be an AUSA because, as a current one told him, "It's simple: Your job is to do the right thing, for the right reasons, all the time. It's not to win the most trials, get the longest sentences, or have the last word. Your job is to seek justice, represent your country, and honor the rule of law." That work appeals to Simon.

In my Criminal Procedure class in fall 2022, Simon stood out for his thorough preparation and accurate answers to my questions. He also posed a number of interesting questions that deepened the understanding of the material for the entire class. I was always glad to see his hand raised, as I knew that I and the whole class would benefit.

Given his excellent class participation, I had high expectations for his exam. But he outdid them, earning a grade of A+. His answers to the multiple choice questions showed that he had mastered the doctrine. Simon showed that he grasped the deeper themes of the course and applied them perfectly to the essay question. He demonstrated not only writing talent, but also outstanding analytic ability.

Criminal Procedure was in fact one of Simon's favorite courses in law school. He relished the policy discussions, in particular. He also enjoyed Corporations, especially the topics of fiduciary duties and insider trading. He is hoping to merge his interests in criminal and corporate law to work on white collar cases, as a prosecutor and possibly as a defense lawyer. Before becoming an AUSA, he hopes to work at a law firm doing some combination of commercial litigation and white collar investigative work.

He wrote a note for the Federal Communications Law Journal. He argues that existing Fourth Amendment doctrine in the lower courts is inconsistent respecting contemporary surveillance technologies like pole cameras, geo-fencing, and facial recognition software. He recommends that the Supreme Court adopt a new test to determine when surveillance is too widespread and intrusive to be done without a warrant supported by probable cause. His proposed test relies on objective factors that the Supreme Court has identified in its electronic surveillance cases. He uses recent circuit court decisions that have split on various technologies to show the problems with the status quo and the consistency and clarity his solution would provide.

Simon likes to read contemporary non-fiction and biographies, classic novels, and the occasional spy-thriller. He most recently read Persuasion by Jane Austen, and before that These Truths, a history of the United States, by Jill Lepore.

Simon has great fondness for the neighborhood where he grew up in Brooklyn, Park Slope, near Prospect Park. He is proud to be a New Yorker, and believes he learned there toughness and resilience, as well as an appreciation for a rich diversity of people. His family seems secure and tight-knit; he clearly admires and is grateful to his parents and his older sister and brother. He has a deep appreciation for the arts, relishing playing the clarinet, especially his favorite Bach cantata, and oil painting. He loves to play tennis, including recreational tournaments in DC. I always enjoy conversations with Simon. He radiates thoughtfulness, eagerness to learn, and good cheer. He would be a pleasure to work with and a great asset to your chambers.

Please do not hesitate to contact me if I may be of further assistance.

Very truly yours,

Renée Lettow Lerner
Donald Phillip Rothchild Research Professor of Law
The George Washington University Law School
(202) 994-5776
rlerner@law.gwu.edu

Rene Lerner - rlerner@law.gwu.edu - (703) 528-8155

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend most highly and enthusiastically Simon Poser for a clerkship.

Every so often, a student stands out in a sea of accomplished, intellectually curious, smart law students. Simon Poser is that student.

In the spring of 2023, Simon took my Corporations class at George Washington University Law School. Even in our first few sessions, he asked some probing questions that indicated his intuitive understanding of the complex Corporations material.

When comparing Simon to other law students I have taught over the past eight years, I would rank him among the most inquisitive and knowledgeable. Only a handful of students each year have earned an outright A on any of my exams. Simon was one of a very few in Corporations to earn an outright A, and I expect a similar grade from him in my Corporate Finance class next spring.

I have been able to get to know Simon well, as we would talk before and after class, as well as after the semester ended. He was excited to share with me that he was offered and accepted prestigious judicial and legal internships for the 2023-2024 academic year. Given Simon's experience as a legal intern with the U.S. Attorney's Office for the Eastern District of New York, as a judicial intern in several courts and then with the Department of Justice's Civil Fraud Section, Simon will be able to hit the ground running in your court. All this relevant experience will serve him well.

Simon is exactly the kind of clerk I would want if I were a judge: someone who is prepared and knowledgeable, but also knows how to spot the issue and ask all the right questions. He has the perfect mix of skills to succeed as a clerk.

In addition, for such a clerkship, his character therefore matters. I can -- without any hesitation -- recommend Simon not only as an excellent student but as a good person too with a solid character. He has told me about his family as both his parents are attorneys, and his mom has served as a justice in the New York Court of Claims for the past decade or so. Simon hopes to live up to these big shoes to fill. I have no doubt he will do just that, and leave his own mark.

Simon Poser would be an outstanding clerk. He is a knowledgeable young lawyer, but always keen to learn more. Based on his efforts in our class and his internship experiences, I am positive Simon would stand out in your courtroom the same way he has stood out in my classroom. He is extremely personable, keenly intelligent, hardworking and would be a tremendous asset to your court.

Please do not hesitate to contact me with any further questions about his qualifications. Thank you for your consideration.

Sincerely,

Melinda Roth

Visiting Assistant Professor
The George Washington University Law School
melindaroth@law.gwu.edu

Roth Melinda - melindaroth@law.gwu.edu

SIMON AUGUST POSER

2030 F Street NW, Apt 509, Washington D.C. 20006 · (718)-650-0272 · sposer@law.gwu.edu

WRITING SAMPLE

This writing sample is a draft order I wrote during my internship in the chambers of the Honorable Jason Park, who currently serves as an Associate Judge on the D.C. Superior Court. This order pertained to a motion filed by the government to issue a protective order for the dissemination of body worn camera footage from police officers involved in the case. Specifically, the government wanted to restrict who could view this footage given that it contained personal information of individuals who they were worried could have their privacy or safety put at risk if unauthorized persons obtained possession of the footage.

The name of the defendant, as well as other identifying information from the case, has been redacted from this writing sample in accordance with the request of Judge Park and his clerks. If you would like to receive any additional explanation regarding the order or the facts of the case, please let me know.

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION – FELONY BRANCH**

UNITED STATES OF AMERICA,

v.

[Redacted],

Defendant.

Case No.: [Redacted]

Judge Jason Park

[Redacted]

ORDER

This matter comes before the court on the government’s opposed motion for a protective order governing body worn camera (“BWC”) materials, filed on [redacted], 2023, and the defendant’s opposition thereto, filed [redacted], 2023. Having reviewed the materials in this case, any opposition thereto, and the records therein, for the reasons stated below the government’s motion is **GRANTED**.

PROCEDURAL AND FACTUAL BACKGROUND

The defendant, [redacted], is charged with carrying a pistol without a license. The defendant was arrested and presented before the Court on [redacted], 2022. A preliminary hearing took place on [redacted], 2023. On [redacted], 2023, the government filed this motion (“Gov’t Mot. Protective Order”) seeking a protective order to prohibit dissemination of BWC materials to any party outside of the “legal defense team”¹ and limiting the use of these materials

¹ “The ‘legal defense team’ includes defense counsel (defined as counsel of record in this case, including any post-conviction or appellate counsel) and any attorneys, investigators, paralegals, support staff, and expert witnesses who are advising or assisting defense counsel in connection with this case. The legal defense team shall not include the defendant or the defendant’s family members, friends, or associates.” Gov’t’s Proposed Order at [redacted].

by the defendant and the legal defense team exclusively to this case. *See generally* Gov’t’s Proposed Order. The defendant filed his opposition on [redacted], 2023, asking the Court to deny the government’s motion for a protective order governing BWC materials under the First, Fifth, and Sixth Amendments, Superior Court Criminal Rule 16, and *Brady v. Maryland*, 373 U.S. 83 (1963). *See* Def. Opp’n at [redacted].

LEGAL STANDARD

Superior Court Rule of Criminal Procedure 16(d)(1) provides that “[a]t any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.” This includes the issuance of protective orders, which are used frequently in criminal cases to facilitate the prompt disclosure of information while protecting the privacy and safety of interested third parties.² When a Superior Court procedural rule, such as Rule 16, is modeled after an identical federal counterpart³, this Court may look to federal case law interpreting the corresponding federal rule “for guidance on how to interpret our own [rule].” *See, e.g., Bilal v. United States*, 240 A.3d 20, 27 n.7 (D.C. 2020) (quoting *Estate of Patterson v. Sharek*, 924 A.2d 1005, 1009-10 (D.C. 2007)); *Rowland v. United States*, 840 A.2d 664, 678 & n.16 (D.C. 2004).

A party seeking a protective order bears the burden of showing good cause. *See, e.g., United States v. Cordova*, 806 F.3d 1085, 1090 (D.C. Cir. 2015). Good cause is established through a “particularized, specific showing.” *See, e.g., United States v. Bulger*, 283 F.R.D. 46, 52 (D. Mass. 2012); *United States v. Smith*, 985 F. Supp. 2d 506, 523-24 (S.D.N.Y. 2013). “Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not

² *See United States v. O’Keefe*, No. 06-CR-249, 2007 WL 1239204, at *2 (D.D.C. Apr. 27, 2007) (noting that “[p]rotective orders in criminal cases are not uncommon”); *Alderman v. United States*, 394 U.S. 165, 185 (1969) (advancing the principle that the “trial court can and should, where appropriate, place a defendant and his counsel under enforceable orders against **unwarranted disclosure** of the materials which they may be entitled to inspect.”) (emphasis added).

³ Federal Rule of Criminal Procedure 16(d) states that the court “may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.”

support a good cause showing.” *United States v. Wecht*, 484 F.3d 194, 211 (3d Cir. 2007) (quoting *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994)). “The nature of the showing of particularity, however, depends upon the nature or type of protective order at issue.” *Bulger*, 283 F.R.D. at 52-53; *see also United States v. Cudd*, 534 F. Supp. 3d 48, 57 (D.D.C. 2021) (noting that in cases that involve substantial amounts of discovery, “it is consistent with the proper allocation of evidentiary burdens for the Court to construct a broad . . . protective order upon a threshold showing by the government of good cause.” (quoting *Smith*, 985 F. Supp. 2d at 546)).

In deciding whether to enter a protective order and what the terms of any protective order should be, the Court must balance the interests asserted by the moving party, the interests of the non-moving party, and the public interest. *See Smith*, 985 F. Supp. 2d at 523-24; *see also United States v. Davis*, 809 F.2d 1194, 1210 (6th Cir. 1987) (demonstrating that trial courts must consider whether the imposition of the protective order would substantially prejudice the defendant). Furthermore, the privacy interests of third parties may properly be considered in a court’s balancing of competing interests. *See Smith*, 985 F. Supp. 2d at 524-25.

ANALYSIS

In this case, the Court will grant the government’s motion because the government has established good cause to issue the proposed protective order governing BWC materials. First, the government has an interest in protecting the privacy rights and safety concerns of crime victims, witnesses, and third parties. As the government contends, BWC footage frequently includes personal identifying and other sensitive information, the dissemination of which raises potential privacy and safety concerns absent a protective order. *See Gov’t Mot. Protective Order at [redacted]*. The fact that D.C. has adopted regulations governing the disclosure of BWC

footage to the public further reinforces this Court's finding that restrictions on the dissemination of BWC footage are warranted. *See* D.C. Mun. Regs. Tit. 24 § 3902.5(a); *see also United States v. Johnson*, 314 F. Supp. 3d 248, 257 (D.D.C. 2018) (acknowledging that D.C.'s regulations governing the disclosure of BWC footage to the public, although not controlling, "represent a policy judgment that such materials tend to contain information that implicates privacy concerns"). Here, the proposed protective order furthers the government's legitimate interest in protecting the privacy interests and safety concerns of individuals captured on the BWC footage.

Second, the issuance of a protective order will not prejudice the defendant. Rather, the issuance of a protective order will facilitate the early disclosure of BWC materials, which defense counsel can review with the defendant and others subject to the restrictions detailed in the protective order. While this Court understands the concerns articulated in the defendant's opposition, nothing in the proposed order prevents the legal defense team from copying materials as they deem necessary for use in connection with this case and retaining a copy following the conclusion of the case. *See* Govt's Proposed Order at [redacted]. Furthermore, nothing prevents the defendant from seeking to modify the protective order at any time. *See id.* at [redacted].

However, the Court is persuaded that allowing defense counsel to show portions of the BWC footage that do not contain sensitive information to prospective witnesses and others will better facilitate defense counsel's investigation. Thus, this Court will modify the language of the protective order to allow defense counsel to authorize the viewing of the BWC footage where doing so reasonably can be expected to further the investigation of the defendant's case and the preparation of his defense.⁴

⁴ This language is similar to language used by the District Court for the District of Columbia in *Johnson*, 314 F. Supp. 3d at 256, and in *United States v. Kingsbury*, 325 F. Supp. 3d 158 (D.D.C. 2018). The *Johnson* court went further by requiring the government to redact all discoverable BWC footage before disclosing it to the defense in the absence of a consent protective order. *Johnson*, 314 F. Supp. 3d at 253-55. At this stage, this Court is unwilling to

Third, the issuance of this protective order is in the public interest. The government's proposed protective order does not apply to BWC materials that are, or later become, part of the public record. *See* Govt's Proposed Order at [redacted]. Additionally, any interest the public has in unfettered access to BWC footage must be weighed against the privacy concerns of individuals captured on camera. *See Smith*, 985 F. Supp. 2d at 524 (collecting cases). Thus, the Court finds that the protective order strikes an appropriate balance between protecting the privacy interests of third parties and while facilitating efficient discovery and enabling the defendant to investigate his case and prepare for a potential trial.⁵

Moreover, the Court disagrees with the defendant's argument that the government's proposed protective order violates his Sixth Amendment right to effective assistance of counsel by hindering defense counsel's ability to conduct a thorough investigation, consult with experts, and moot with attorneys at the Public Defender's Service. Def. Opp'n at [redacted]. The definition of "legal defense team" in the government's proposed protective order includes "any attorneys, investigators, paralegals, support staff, and expert witnesses who are advising or assisting defense counsel in connection with this case." Govt's Proposed Order at [redacted]. This language is unambiguous and broad enough to allow defense counsel to consult with experts and moot with other PDS attorneys. The Court also disagrees that the proposed protective order impermissibly infringes on the defendant's ability to participate in his own defense. The protective order allows defense counsel to share BWC footage with the defendant and authorizes defense counsel to leave

place the burden of redacting all discoverable BWC footage on the government because such a policy would cause a substantial delay in disclosure and "is inconsistent with the rules requiring efficient and expeditious discovery." *See United States v. Dixon*, 355 F. Supp. 3d 1, 8 (D.D.C. 2019) (distinguishing *Johnson*, granting BWC protective order, and refusing to shift the burden of redacting BWC footage to the government).

⁵ Defendant correctly points out there is a presumption of public access to court documents, and that in order to overcome the presumption against protective orders the government must show its protective order is tailored to serve a compelling government interest. *See* Def's Opp'n at [redacted]. For the reasons enumerated herein, this Court finds the government's need to protect the privacy rights of individuals captured on BWC footage is such an interest, and the order is sufficiently tailored to serve it without infringing on the defendant's constitutional rights.

a copy of the materials, redacted of sensitive information, with the District of Columbia Department of Corrections (“DCDOC”) so that the defendant can view the materials pursuant to DCDOC’s procedures.

Finally, the Court does not agree with the defendant that the issuance of a protective order would infringe on defense counsel’s ethical duties. Defendant claims that the government’s proposed protective order contravenes the rules of ethics by preventing defense counsel from providing the defendant with all disclosed BWC footage in its unredacted form as part of his “entire file” at the conclusion of his case. Def. Opp’n at [redacted]. Nothing in the D.C. Bar opinions cited to by the defendant convinces the Court that the defendant is entitled to retain unredacted BWC materials as part of his entire file at the close of his case. *See United States v. Wolfendale*, 2020 D.C. Super. LEXIS 34, *10 n.1 (D.C. Super. Ct. November 30, 2020) (granting BWC protective order over the defendant’s opposition and finding that “the [d]efendant’s attorney has no ethical obligation to maintain the body-worn camera [footage] after an acquittal or dismissal, because the Defendant is not entitled to the body-worn camera [footage], and thus [it] does not fall under the obligations in D.C. Rules of Professional Conduct 1.16(d)”).

Defense counsel seems to believe that the government’s proposed protective order requires the return of all copies of the BWC footage to the United States Attorney’s Office at the conclusion of the case. *See* Def. Opp’n at [redacted]. This is simply not the case. In fact, the government’s proposed protective order explicitly allows defense counsel to “retain a copy of the BWC materials following the conclusion of this case.” Govt’s Proposed Order at [redacted].

In light of this showing, and in order to protect the individual officers’ privacy interests while also expediting the flow of discovery, the Court grants the government’s motion for a protective order in this case. *See Johnson*, 314 F. Supp. 3d at 251-52. The proposed protective

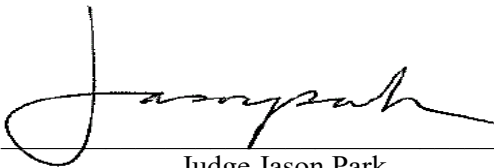
order appropriately facilitates speedy discovery while protecting the security and privacy interests of witnesses and third parties. The Protective Order Governing Body Worn Camera Footage issued below adopts the government's proposed language, except that paragraph four (and the subsequent paragraphs where appropriate) are modified to allow defense counsel to authorize the viewing of the BWC footage by any person where doing so reasonably can be expected to further the investigation of the defendant's case and the preparation of his defense. Defense counsel may seek modifications to the protective order to ensure that the defendant is not prejudiced.

Accordingly, it is this [redacted] day of [redacted], 2023, hereby

ORDERED that the government's motion is **GRANTED**; and it is further

ORDERED that a signed protective order governing body worn camera materials will issue separately.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Jason Park", is written over a horizontal line.

Judge Jason Park
Superior Court of the District of Columbia

Copies to:
[Redacted]
Via CaseFileXpress

Applicant Details

First Name **Thomas**
 Last Name **Poston**
 Citizenship Status **U. S. Citizen**
 Email Address thomas.poston@yale.edu
 Address

Address
Street
81 Nicoll St
City
New Haven
State/Territory
Connecticut
Zip
06511
Country
United States

Contact Phone Number **757-560-2320**

Applicant Education

BA/BS From **Wake Forest University**
 Date of BA/BS **May 2018**
 JD/LLB From **Yale Law School**
https://www.nalplawschools.org/content/OrganizationalSnapshots/OrgSnapshot_225.pdf
 Date of JD/LLB **May 29, 2024**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Yale Journal of International Law**
Yale Journal on Regulation
 Moot Court Experience **Yes**
 Moot Court Name(s) **Philip C. Jessup International Law Moot Court Competition**
National Energy and Sustainability Moot Court Competition

Bar Admission**Prior Judicial Experience**

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience**Recommenders**

Hathaway, Oona
oona.hathaway@yale.edu
203-436-8969

Kysar, Douglas
douglas.kysar@yale.edu
203-436-8970

Parrillo, Nicholas R.
nicholas.parrillo@yale.edu
203-436-2560

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

81 Nicoll Street
New Haven, CT 06511
(757) 560-2320

June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a student at Yale Law School writing to apply for a clerkship in your chambers following my graduation in May 2024.

I am particularly interested in your chambers given my personal and professional connections to the Eastern District of Virginia. I grew up along the Virginia-North Carolina border just south of Hampton Roads, where my family remains today. Prior to law school, I worked in Arlington, Virginia, as a federal government consultant.

I am also personally inspired by your pioneering role as an openly LGBTQ jurist and confident that I would benefit greatly from your mentorship during and beyond my time as your clerk, especially as I consider charting my own career as a public servant.

I have enclosed my résumé, reference list, transcript, and writing sample. You will also receive letters of recommendation on my behalf from Professors Hathaway, Kysar, and Parrillo. I would be happy to provide any additional information you might find helpful, and I would welcome the opportunity to interview with you. Thank you for your consideration.

Sincerely,

Thomas Poston

Enclosures

THOMAS M. POSTON

+1 (757) 560-2320 | 81 Nicoll Street, New Haven, CT 06511 | thomas.poston@yale.edu

EDUCATION

YALE LAW SCHOOL, J.D. Candidate May 2024
Journals: Yale Journal on Regulation, Bulletin Editor; Yale Journal of International Law, Articles Editor
Moot Court: Philip C. Jessup International Law Moot Court (First Place, U.S. National Round, New York); National Energy & Sustainability Moot Court Competition
Activities: Yale Society of International Law, Vice President of Scholarship; Yale Environmental Law Association, Co-President; Climate Change & Animal Agriculture Litigation Initiative, Research Assistant; Professor Paul Gewirtz, Research Assistant; Outlaws; First-Generation Professionals
Fellowships: Ludwig Program in Public Sector Leadership, Fellow; Center for Global Legal Challenges, Herbert J. Hansell Student Fellow; Brooks Institute, Emerging Scholar Fellow

WAKE FOREST UNIVERSITY, B.A., Politics & International Affairs, Economics May 2018
Honors: *Summa cum laude*, Phi Beta Kappa; Graylyn Scholar; Carlton P. West Award (valedictorian); Fleer Award (top thesis); Richards Award (excellence in Politics & International Affairs)

EXPERIENCE

QUINN EMANUEL URQUHART & SULLIVAN, LLP, Washington, DC & New York, NY May—July 2023
Summer Associate: Research, analyze, and communicate case law in support of civil litigation and arbitral matters, including on contract, choice-of-law, and constitutional questions. Draft portions of D.C. Circuit response brief.

NATURAL RESOURCES DEFENSE COUNCIL, Washington, DC June—July 2022
Litigation Intern: Conducted legal research and wrote memoranda to inform litigation and regulatory advocacy related to federal energy and environmental statutes, the law of the U.S. territories, and the APA.

EUROPEAN COURT OF HUMAN RIGHTS, Strasbourg, France May—June 2022
Kirby Simon Fellow, Directorate of the Jurisconsult: Drafted public-facing analyses of the Court's recent case law in French and English. Prepared discussion materials and final report for continent-wide jurists' conference.

FULBRIGHT U.S. STUDENT RESEARCH FELLOWSHIP, Phnom Penh, Cambodia Jan.—June 2021
Research Fellow, Fulbright Program: Conducted legal and field research, including expert interviews, to identify opportunities to promote accountability for labor trafficking under U.S., U.K., Cambodian, and international law.

DELOITTE CONSULTING, LLP, Arlington, VA July 2018—Jan. 2021
U.S. Department of State, Bureau of Consular Affairs: Drafted quarterly reports to Congress on immigration policy. Developed data-analytics tools for use at 200+ overseas posts. Supported Bureau's COVID-19 response.
Inter-American Development Bank, V.P. for Finance: Designed and proposed policy reforms to ensure the long-term financial sustainability of the Bank's donor trust funds.
U.S. Department of Homeland Security: Composed and edited agency budget narratives and policy briefings for both executive and congressional audiences throughout the federal appropriations cycle.

U.S. DEPARTMENT OF STATE, Washington, DC May—Aug. 2017
Intern, Bureau of Oceans & International Environmental & Scientific Affairs: Wrote press releases, issue analyses, and daily media reviews published to 400+ DOS readers. Prepared briefings and logistics for diplomatic visits.

COUNCIL OF EUROPE, Strasbourg, France Sept.—Dec. 2016
Trainee, Directorate General of Human Rights & Rule of Law: Drafted analyses of media freedom and public surveillance law in various Council member states. Reported on parliamentary sessions for Directorate leadership.

SKILLS, QUALIFICATIONS, AND INTERESTS

Proficient in French. Granted Top Secret clearance in 2019. Enjoy hiking, birding, and English Romantic poetry.

THOMAS M. POSTON

+1 (757) 560-2320 | 81 Nicoll Street, New Haven, CT 06511 | thomas.poston@yale.edu

RECOMMENDERS

Professor Oona A. Hathaway

Gerard C. and Bernice Latrobe Smith Professor of International Law

Yale Law School

oona.hathaway@yale.edu

(203) 436-8969

Professor for International Law course and Foreign Relations seminar; Jessup Moot advisor

Professor Douglas Kysar

Joseph M. Field '55 Professor of Law

Yale Law School

douglas.kysar@yale.edu

(203) 436-8970

Professor for Torts and Regulation course; Supervisor of research in experiential CAFE Lab

Professor Nicholas R. Parrillo

William K. Townsend Professor of Law

Yale Law School

nicholas.parrillo@yale.edu

(203) 436-2560

Professor for Administrative Law course; Supervisor of substantial paper in administrative law

ADDITIONAL REFERENCES

Daina Bray

Senior Litigation Fellow, Senior Research Scholar & Project Manager

Climate Change & Animal Agriculture Litigation Initiative, Yale Law School

daina.bray@yale.edu

(713) 492-6219

Litigation research supervisor and co-author

Aaron Colangelo

Chief Litigation Counsel

Natural Resources Defense Council

acolangelo@nrdc.org

(202) 289-2376

Supervising attorney during NRDC internship

Will Frankenstein, PhD

Specialist Leader, Government & Public Services

Deloitte Consulting LLP

wfrankenstein@deloitte.com

(202) 486-9811

Manager of consulting work at the Department of State

YALE LAW SCHOOL

Office of the Registrar

**TRANSCRIPT
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Page: 1

Date Entered: Fall 2021

Candidate for : Juris Doctor MAY-2024

SUBJ NO. COURSE TITLE UNITS GRD INSTRUCTOR

Fall 2021

LAW 10001	Constitutional Law I:Section A	4.00	CR	J. Driver
LAW 11001	Contracts I: Group 3	4.00	CR	Y. Listokin
LAW 12001	Procedure I: Section B	4.00	CR	J. Suk
LAW 14001	Criminal Law & Admin I: Sect A	4.00	CR	F. Doherty
	Term Units	16.00	Cum Units	16.00

Spring 2022

LAW 21283	International Commenc. Arbit.	2.00	H	W. Reisman, Y. Banifatemi
LAW 21601	Administrative Law	4.00	H	N. Parrillo
LAW 21642	International Trade Law	2.00	H	G. Katzmman
LAW 21722	Statutory InterpretRegState	3.00	H	W. Eskridge
LAW 21763	International Law	4.00	H	O. Hathaway
LAW 50100	RdgGrp: Animals and the Law	1.00	CR	D. Kysar
	Term Units	16.00	Cum Units	32.00

Fall 2022

LAW 20219	Business Organizations	4.00	H	J. Macey
LAW 20297	Energy Law and Policy	3.00	H	D. Elliott
	Supervised Analytic Writing			
LAW 20557	Torts and Regulation	3.00	H	D. Kysar
LAW 20684	AdminLaw&Bureaucracy:SupRes	1.00	H	N. Parrillo
LAW 30241	ClimateAnimalFoodEnvironPolLab	3.00	H	D. Kysar, J. Lovvorn, D. Bray, V. Morris
LAW 50100	RdgGrp: Scholarship Workshop	1.00	CR	R. Siegel
	Term Units	15.00	Cum Units	47.00

Spring 2023

LAW 21017	Property	4.00	P	T. Zhang
LAW 21277	Evidence	4.00	H	S. Carter
LAW 21548	NegotiatingIntlAgrmtsClimChang	2.00	H	S. Biniaz
LAW 21684	AdminLaw&Bureaucracy:SupRes	1.00	H	N. Parrillo
LAW 21787	ForRelationsIntlLaw inPractice	4.00	H	O. Hathaway
LAW 30242	Advanced CAFE Lab	1.00	H	D. Kysar, J. Lovvorn, D. Bray, V. Morris
	Term Units	16.00	Cum Units	63.00

***** END OF TRANSCRIPT *****



HEATHER ABBOTT, REGISTRAR

Official transcript only if registrar's signature, embossed university seal and date are affixed.

YALE LAW SCHOOL
P.O. Box 208215
New Haven, CT 06520

EXPLANATION OF GRADING SYSTEM

Beginning September 2015 to date

<u>HONORS</u>	Performance in the course demonstrates superior mastery of the subject.
<u>PASS</u>	Successful performance in the course.
<u>LOW PASS</u>	Performance in the course is below the level that on average is required for the award of a degree.
<u>CREDIT</u>	The course has been completed satisfactorily without further specification of level of performance. All first-term required courses are offered only on a credit-fail basis. Certain advanced courses are offered only on a credit-fail basis.
<u>FAILURE</u>	No credit is given for the course.
<u>CRG</u>	Credit for work completed at another school as part of an approved joint-degree program; counts toward the graded unit requirement.
<u>RC</u>	Requirement completed; indicates J.D. participation in Moot Court or Barrister's Union.
<u>T</u>	Ungraded transfer credit for work done at another law school.
<u>TG</u>	Transfer credit for work completed at another law school; counts toward graded unit requirement.
<u>EXT</u>	In-progress work for which an extension has been approved.
<u>INC</u>	Late work for which no extension has been approved.
<u>NCR</u>	No credit given because of late withdrawal from course or other reason noted in term comments.

Our current grading system does not allow the computation of grade point averages. Individual class rank is not computed. There is no required curve for grades in Yale Law School classes.

Classes matriculating September 1968 through September 1986 must have successfully completed 81 semester hours of credit for the J.D. (Juris Doctor) degree. Classes matriculating September 1987 through September 2004 must have successfully completed 82 credits for the J.D. degree. Classes matriculating September 2005 to date must have successfully completed 83 credits for the J.D. degree. A student must have completed 24 semester hours for the LL.M. (Master of Laws) degree and 27 semester hours for the M.S.L. (Master of Studies in Law) degree. The J.S.D. (Doctor of the Science of Law) degree is awarded upon approval of a thesis that is a substantial contribution to legal scholarship.

<i>For Classes Matriculating 1843 through September 1950</i>	<i>For Classes Matriculating September 1951 through September 1955</i>	<i>For Classes Matriculating September 1956 through September 1958</i>	<i>From September 1959 through June 1968</i>
80 through 100 = Excellent 73 through 79 = Good 65 through 72 = Satisfactory 55 through 64 = Lowest passing grade 0 through 54 = Failure	E = Excellent G = Good S = Satisfactory F = Failure	A = Excellent B = Superior C = Satisfactory D = Lowest passing grade F = Failure	A = Excellent B+ B = Degrees of Superior C+ C = Degrees of Satisfactory C- D = Lowest passing grade F = Failure
To graduate, a student must have attained a weighted grade of at least 65.	To graduate, a student must have attained a weighted grade of at least Satisfactory.	To graduate, a student must have attained a weighted grade of at least D.	To graduate a student must have attained a weighted grade of at least D.
<i>From September 1968 through June 2015</i>			
H = Work done in this course is significantly superior to the average level of performance in the School. P = Successful performance of the work in the course. LP = Work done in the course is below the level of performance which on the average is required for the award of a degree.	CR = Grade which indicates that the course has been completed satisfactorily without further specification of level of performance. All first-term required courses are offered only on a credit-fail basis. Certain advanced courses offered only on a credit-fail basis. F = No credit is given for the course.	RC = Requirement completed; indicates J.D. participation in Moot Court or Barrister's Union. EXT = In-progress work for which an extension has been approved. INC = Late work for which no extension has been approved. NCR = No credit given for late withdrawal from course or for reasons noted in term comments.	CRG = Credit for work completed at another school as part of an approved joint-degree program; counts toward the graded unit requirement. T = Ungraded transfer credit for work done at another law school. TG = Transfer credit for work completed at another law school; counts toward graded unit requirement. *Provisional grade.

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to highly recommend Thomas Poston for a clerkship.

I first met Thomas in Spring 2022, when he was a student in my International Law course. He was a great participant in class and wrote an excellent exam. In part because of his excellent performance, I selected him from among a large number of applicants for my Foreign Relations and International Law in Practice course. In this course, students write intensive research memos every week, eventually building to writing a longer research project that is, ideally, publishable. As part of the course, Thomas worked on a project examining legal issues surrounding the call for reparations for Ukraine. For this project, Thomas combed through evidence of historical practice, leading treatises and codifications of law, and domestic and international jurisprudence to understand the rules of law governing war reparations and sanctions in the context of Russia's invasion of Ukraine. Along the way, he engaged in extensive collaboration with both a classmate and with me.

The research is on the cutting edge and has already been shared with a government agency working on the topic, as well as with the Public Interest Law Policy Group, which is working on a reparations plan with the Ukrainian government. Thomas, a classmate, and I are working this summer on revising the research in a publishable article, which we are aiming to submit to journals in August. Throughout, Thomas has proven to be an ideal collaborator. He writes clearly and effectively. He grounds his work in careful research, never going out beyond what the sources will bear, yet seeing opportunities to develop the law. He also has shown excellent judgment, understanding the various political pressures surrounding the project. He has also proven adept at taking in feedback from people close to the problem without being overly influenced by it. He is also just a joy to work with—he is brilliant but humble, always ready to take on any task that is needed, and 100% reliable.

I also saw Thomas at work in my role as an informal faculty supervisor of the Jessup International Moot Court Competition. Thomas and a small team of students formed a team to compete in this international moot court program. Other schools are professionally coached and many award course credit for the time spent preparing for the competition. YLS does neither. Instead, the students arrange the training and do the extensive research and writing on their own. This year, Thomas and a small group of students did that with the help of a recent alum, who served as an informal coach. Harold Koh and I read the written materials and mooted the team a couple of times, but they were the ones who directed the preparation. In the process of preparing for and participating in the competition, Thomas researched, wrote, and edited two written submissions (briefs) applying public international law to a complex set of questions presented. He also competed as an oralist, devising a refined yet flexible argumentative structure, clearly and concisely answer questions from the bench, and delivering unprepared rebuttals responsive to the arguments raised by opposing counsel. The team won First Place in the U.S. National Qualifying Rounds hosted in New York, and advanced to the "octo-finals" (round of sixteen) in the International Rounds of the competition (competing with students from around the world). It was such a remarkable performance—as far as I know, it was YLS's best result ever.

I also have worked with Thomas as an Articles Editor of the Yale Journal of International Law, which I again informally supervise. That role requires excellent judgment and attention to detail. Indeed, editing for YJIL can be more challenging than other journals, because authors are sometimes not native English speakers. Thomas's writing and editing skill has made him an invaluable member of the journal team.

Thomas brings real expertise in international law, but he also has deep interest in domestic law, as well, especially environmental law. After working at the European Court of Human Rights last summer, Thomas went to work at the National Resources Defense Council as a litigation intern. That experience is part of the reason he hopes to clerk—he enjoyed learning about how to use the law most effectively to further staff attorneys' regulatory and legislative advocacy. Thomas also has varied experience in and with government that I expect would provide useful background for his work as a clerk—he understands well the interplay between law, politics, and policy that can sometimes be hard for those without direct government experience to master.

Last, I will note that Thomas has been immensely successful at YLS. As of this writing, he has a perfect academic record. And he has done this while maintaining perspective—he hikes and continues to pursue his interests in literature and poetry.

For all these reasons, I believe that Thomas will make an excellent law clerk. Please feel free to e-mail me at oonahathaway@yale.edu or call me at 203-436-8969 with any questions you may have.

Sincerely,

Oona A. Hathaway
Gerard C. and Bernice Latrobe Smith Professor of International Law
Yale Law School

Oona Hathaway - oonahathaway@yale.edu - 203-436-8969

June 05, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Thomas Poston has asked me to write a letter of recommendation on behalf of his application to clerk in your chambers. I am absolutely delighted to do as I hold Thomas in extremely high regard and I believe he will make a superb law clerk. To begin with, he has an extremely high level of raw brainpower. Of more significance for your purposes, he also has the patience, diligence, and desire to channel that brainpower into the craft of lawyerly analysis and writing. Finally, he has a personality that can only be described as humble and winning. I have no doubt that everyone on your team would enjoy – indeed cherish – working with him.

I have been fortunate to engage with Thomas in several different capacities during his time in law school. He has been a student in my doctrinal course (Torts & Regulation), as well as an invaluable team member during two semesters of my clinical course (Climate, Animal, Food, and Environmental Law and Policy). Throughout these courses, Thomas has made an extraordinary impression. In the Torts class, for instance, Thomas stood out within a crowded lecture hall by making contributions to class discussion that were consistently thoughtful, articulate, and clearly reflective of extensive reading, preparation, and contemplation. Thomas also distinguished himself by writing one of the very best exams in the course, graded on a blind basis.

The clinical course was much smaller in size and enabled me to get to know and admire Thomas even more deeply. This course combined intensive discussion-oriented seminar sessions with concrete law and policy advocacy work, typically in partnership with outside organizations. Week in and week out, Thomas demonstrated an unparalleled level of intellectual bravery and agility in confronting the many challenging moral and legal questions that are raised by humanity's engagement with and use of non-human animals. His mind is truly dazzling, but so too is his commitment to respectful, engaged dialogue.

In his written work for the clinical course, Thomas has shown himself to be a thorough and thoughtful researcher and writer. One of his research outputs (a historical survey of climate change litigation relating to animal agriculture around the world to date) showed both his ability to survey an area of law effectively and efficiently, and to draw helpful and penetrating insights. He writes exceptionally well and I have no doubt that he would become one of your most trusted and valuable law clerks, as he has become one of the most important contributors in our clinic. Throughout his time in the clinic, Thomas has demonstrated great creativity and confidence in dealing with new and complex legal issues, a tremendous spirit of collaboration, and a steady and inspiring dedication to advocacy in the public interest.

Finally, I want to note Thomas' participation on a climate litigation panel during a national environmental and food law conference that was held in March 2023. Thomas presented on "Climate Litigation & Animal Agriculture," and gave a thorough but concise overview of litigation developments around the world. My colleagues and I were deeply impressed by his presence on the stage. He presented alongside experienced attorneys and he was confident, knowledgeable, and engaging – he spoke conversationally and with authority, totally comfortable in front of the crowd. His deep intellectual engagement with the subject matter shone through: He was clearly relishing the opportunity to discuss the ideas on which he'd been working. I have to imagine that Thomas would equally relish the opportunity to discuss with you and his fellow clerks the many cases and issues he'd be researching in your chambers.

In short, Thomas is an immensely talented student who will make a fabulous law clerk. What makes all his impressive academic achievements especially gratifying to behold is that Thomas is also an unassuming, thoughtful, and kind individual. He is witty, warm, and delightfully grounded. I have no doubt that he will be among the most effective and beloved law clerks you will have.

If you need any further information, I can be reached at (203) 436-8970 or by email at douglas.kysar@yale.edu.

With best regards,

Douglas A. Kysar

Douglas Kysar - douglas.kysar@yale.edu - 203-436-8970

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to give my strong recommendation to Thomas Poston (Yale JD 2024) for a clerkship in your chambers.

After first meeting Thomas in my large Administrative Law class that he precociously took as a 1L in spring 2022 (where he impressively scored in the top 12% on the blind-graded exam), I have been even more impressed by the excellent research paper that he wrote through an independent study under my supervision during his 2L year (2022-23).

Thomas's paper falls at the intersection of administrative law (my field) and international law. Beyond the familiar legal devices of international cooperation (Article II treaties, congressional-executive agreements, and sole executive agreements), U.S. agencies have increasingly cooperated with their foreign counterparts through "nonbinding international agreements" (NIAs), which—withstanding their nonbinding legal status—enable much regulatory coordination and information-sharing between governments. Three leading scholars of international law—Jack Goldsmith, Curt Bradley, and my colleague Oona Hathaway—have a new article in the *University of Chicago Law Review* for which they used FOIA to assemble a novel dataset of NIAs, bringing to light just how prevalent these agreements have become, especially in covering significant and controversial matters. As those three authors explain:

Despite their prevalence and importance, nonbinding agreements have not traditionally been subject to any of the domestic statutory or regulatory requirements that apply to binding agreements. As a result, they have not been centrally monitored or collected within the executive branch, and they have not been systematically reported to Congress or disclosed to the public. Recent legislation [in December 2022] addresses this transparency gap to a degree [by imposing transparency mandates on a subset of NIAs], but substantial gaps remain.

While most observers share the suspicion expressed above regarding the NIA "transparency gap," Thomas's paper makes the original and provocative claim that the lack of transparency about NIAs can, to a large degree, be a good thing. In a show of intellectual initiative and enterprise that is extraordinary for a student and more characteristic of a professional scholar, Thomas sought and obtained access from Professor Hathaway to the dataset she had created with Goldsmith and Bradley. Working from this body of primary sources, Thomas builds an argument that letting agencies cooperate in relative secrecy has advantages that need to be weighed as we consider adopting reform proposals that would require more disclosure of NIAs to Congress and to the public.

Thomas's argument draws upon his extensive reading and synthesis of literature in law and political science. As he contends, increased disclosure to Congress and the public will impose process costs on U.S. agencies who want to make NIAs—and may render their foreign counterparts more skittish about making them—with the result that U.S. agencies will make fewer such agreements. In a globalizing world where international coordination is often necessary for any agency to do effective implementation (something that is true even if we focus solely on the effectiveness of U.S. agencies implementing U.S. legislation), fewer NIAs will mean slower and less-complete implementation, not least because coordination with foreign agencies allows U.S. officials to obtain better and more useful information and also to use foreign administrative capacity as a force-multiplier for U.S. goals. One might counter that diminishment in the number and usefulness of NIAs is the justifiable price to pay for greater accountability to Congress, which is a democratic and constitutional value. But Thomas is quite sensitive to these counters and has carefully-reasoned responses that are, again, well-grounded in academic literature: (a) depending on one's definition of democracy, the agencies aren't necessarily less democratic than Congress in this context, as it's well-known that lawmakers lack the staff capacity to keep up with NIAs, meaning any pressure lawmakers exert regarding such agreements may well be driven by private lobbyists seeking to vindicate interests narrower and more concentrated than those to which agencies respond; and (b) at a constitutional level, the president has special competence in foreign relations, imbuing the executive branch with substantial legitimacy in comparison with Congress.

After laying this theoretical foundation, Thomas uses the dataset to identify areas in which agencies have used NIAs in ways that suggest that insulation from congressional and public scrutiny has been salutary. The nature of his claims—that the secrecy in which certain NIAs were conceived (before being uncovered by Hathaway et al. through FOIA) prevented special-interest-driven congressional interference with agency action—is necessarily circumstantial, but he builds the case judiciously, careful not to read the sources for more than they are worth. And the circumstantial case is at times powerful. For example, Thomas delves into the NIAs made by the National Oceanic and Atmospheric Administration (NOAA) with its foreign counterparts to promote research about biodiversity on the ocean floor, producing information about the environmental impacts of deep-sea mining that may make it harder for mining concerns to obtain licenses from NOAA. Members of Congress who've been sensitive to the interests of the deep-sea mining industry might gain more leverage over NOAA's NIAs if those agreements are subject to more disclosure and congressional scrutiny, at a cost to getting the best information about environmental concerns that are officially supposed to play a significant role in the licensing process.

Thomas's paper exhibits strong research and writing skills with two quite different kinds of sources: the more general works on Congress's role in influencing agencies that form the paper's theoretical foundation; and the nitty-gritty primary documents on a

Nicholas R. Parrillo - nicholas.parrillo@yale.edu - 203-436-2560

range of individual agencies like NOAA. I think Thomas's ability to do close reading of these sources and synthesize them into a broader and readable argument speaks very well of the work he'd do as a clerk.

I recommend Thomas strongly. If you wish to discuss his candidacy, please contact me at 203-436-2560 or nicholas.parrillo@yale.edu.

Sincerely,

Nicholas R. Parrillo - nicholas.parrillo@yale.edu - 203-436-2560

THOMAS M. POSTON

+1 (757) 560-2320 | 81 Nicoll Street, New Haven, CT 06511 | thomas.poston@yale.edu

WRITING SAMPLE

I excerpted the attached writing sample from an appellate brief written in the course of the 2023 National Energy & Sustainability Moot Court Competition. My teammate and I wrote the brief on behalf of Appellees, members of the fictional Vandalia Public Service Commission. Portions of the sample provide additional context, including procedural history and factual background information. None of the following material is confidential.

I have included only sections of the brief that I individually drafted and edited, including the sections responsive to Appellant's constitutional claims under the Supremacy Clause and the dormant Commerce Clause. I have not included any portions of the brief written or edited by my teammate. No other person has edited this writing sample.

JURISDICTIONAL STATEMENT

This case involves an appeal from an order of the United States District Court for the Northern District of Vandalia. The district court had subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction), this action having arisen under the Supremacy Clause, U.S. Const. art. VI, cl. 2, and the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, of the United States Constitution. In an order issued on August 15, 2022, the district court granted Defendants’ (now Appellees’) motions to dismiss regarding Plaintiff-Appellant Appalachian Clean Energy Solutions, Inc.’s (“ACES”) challenges to the Vandalia Public Service Commission’s (“the Vandalia PSC”) Capacity Factor Order and the State of Vandalia’s statutory right of first refusal. On August 29, 2022, ACES filed a timely appeal to the Twelfth Circuit. This Court has appellate jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE CASE

Pursuant to the Federal Power Act (“the FPA”), 16 U.S.C. § 791 *et seq.*, the Federal Energy Regulatory Commission (“FERC”) regulates, *inter alia*, interstate electricity transmission and wholesale electricity sales. Factual Background at 13. However, within the FPA’s federalist framework, states retain jurisdiction over retail electricity sales and electricity in intrastate commerce. *Id.* The siting, routing, and permitting of in-state transmission facilities are also left to the jurisdiction of the states. *Id.* at 3. The Vandalia PSC is the state agency responsible for exercising these authorities over utilities subject to its jurisdiction. *Id.* at 6. In addition to its mandate to regulate public utilities to “provide . . . adequate, economical and reliable utility services,” Vand. Code § 24-1-1(a)(2), the Vandalia PSC is also required by state law to “[e]ncourage the well-planned development of utility resources . . . consistent with state needs,” Vand. Code § 24-1-1(a)(3).

In 2011, in a reversal of longstanding regulatory policy, FERC issued Order 1000, eliminating federal rights of first refusal (“ROFR”) from tariffs and other agreements within FERC’s jurisdiction, including the tariff of PJM Interconnection (“PJM”), the regional transmission organization (“RTO”) responsible for the transmission grid in Vandalia and the surrounding region. *See* Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils., 136 FERC 61051, ¶ 256 (2011) (Order 1000). Three years later, on May 3, 2014, Vandalia adopted the Native Transmission Protection Act (“the NTPA”) in order to restore the regulatory *status quo ex ante*. Factual Background at 9. The NTPA grants a statutory ROFR to incumbent electric transmission owners, valid for eighteen months beginning upon PJM’s approval of the electric transmission line in question. *Id.* At the conclusion of that period, the NTPA permits nonincumbent entities to build the electric transmission line instead. *Id.*

At the time of the NTPA’s enactment, there were only two incumbent electric transmission owners in Vandalia: LastEnergy and Mid-Atlantic Power Co. (“MAPCo”). *Id.* at 9. The same is true at present. *Id.* at 4. Both utilities are headquartered and incorporated outside of Vandalia, in Ohio, and both serve customers in several states in addition to Vandalia. *Id.* LastEnergy operates two coal-fired power plants in Vandalia, while MAPCo operates three. *Id.* Pursuant to the construction and maintenance of distribution and transmission power lines, both LastEnergy and MAPCo have obtained easement rights, or rights of way, from numerous local communities and property owners in Vandalia. *Id.* at 10-11.

[. . .]

The global energy company ACES, which is headquartered and incorporated in Vandalia, generates electricity exclusively for the wholesale market and does not participate in the retail market. *Id.* at 4-5. In April 2020, ACES announced its intention to build a major new electric

transmission line, the Mountaineer Express. *Id.* at 5. As proposed, the Mountaineer Express begins in Pennsylvania, terminates in North Carolina, and requires the construction of intermediate transmission facilities within Vandalia. *Id.* at 6, 10.

On April 1, 2022, ACES applied for a Certificate of Public Convenience and Necessity (“CPCN”), which is a prerequisite for commencing construction. *Id.* at 10. That CPCN application is still pending before the Vandalia PSC. *Id.* Meanwhile, the proposed portions of the Mountaineer Express within Vandalia, which PJM approved in March 2022, are subject to the exercise of the statutory ROFR by either LastEnergy or MAPCo until September 2023. *Id.*

On December 13, 2022, the Vandalia PSC issued a Right of Way Order clarifying that, because ACES is not a public utility as defined under Vandalian law, ACES cannot use the rights of way presently owned by LastEnergy. *Id.* at 11. Construction of the Mountaineer Express by ACES will therefore require contentious bargaining with numerous landowners and the clearance of additional land in Vandalia. *Id.*

ACES filed suit against the Vandalia PSC on June 6, 2022. *Id.* at 2. In the complaint, ACES argued that the FPA and Order 1000 preempt Vandalia’s statutory ROFR and contended that the ROFR violates the “dormant” Commerce Clause. *Id.* at 15. On June 27, 2022, the Vandalia PSC moved to dismiss the action for failure to state a claim. *Id.* at 14-16. In an order issued on August 15, 2022, the U.S. District Court for the Northern District of Vandalia granted the Vandalia PSC’s motions to dismiss each of ACES’s claims. *Id.* at 16. ACES filed a timely appeal of that order on August 29, 2022. *Id.*

SUMMARY OF THE ARGUMENT

[. . .]

Neither Order 1000 nor the FPA itself preempts Vandalia's statutory ROFR. Both the plain text and FERC's own avowed interpretation of Order 1000 explicitly indicate that Order 1000 does not preempt non-federal ROFRs. The FPA dictates this result by allocating to the states significant authority over the regulatory matters at which Vandalia's statutory ROFR aims, including the construction of transmission facilities within a state. The statutory ROFR neither purposely nor effectively interferes with matters squarely within FERC's jurisdiction. Although it may present a marginal obstacle to the construction of certain PJM-sanctioned transmission facilities, the statutory ROFR by no means renders such construction impossible.

Finally, the statutory ROFR does not offend the "dormant" Commerce Clause and should not be invalidated based thereon. On its face, the NTPA is neutral and nondiscriminatory with respect to in-state versus out-of-state economic interests. Its practical effect is the antithesis of the economic protectionism that drives dormant Commerce Clause doctrine: any differential treatment the NTPA engenders actually benefits out-of-state entities. If the statute does impose any cognizable burden on interstate commerce, that burden is certainly not excessive relative to the significant legitimate interests and local benefits which the statute promotes.

Accordingly, the district court's order granting Appellees' motions to dismiss Appellant's suit for failure to state a claim should be affirmed.

ARGUMENT

[. . .]

III. FERC Order 1000 does not preempt Vandalia’s statutory ROFR.

A. *By its own terms, Order 1000 does not preempt Vandalia’s statutory ROFR.*

FERC Order 1000 requires “public utility transmission providers to remove . . . any provisions that grant a *federal* right of first refusal.” Order 1000 at ¶ 7 (emphasis added). However, nothing in the plain language of the Order precludes *states* from “regulat[ing] within their assigned domain.” *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 151 (2016). Vandalia regulated within its assigned domain when it enacted its statutory ROFR, exercising its continuing authority over transmission facilities within its borders. *See New York v. FERC*, 535 U.S. 1, 24 (2002) (“Among other things, Congress left to the States authority to regulate generation and transmission siting.”); *see also Piedmont Env’t Council v. FERC*, 558 F.3d 304, 310 (4th Cir. 2009) (“The states have traditionally assumed all jurisdiction to approve or deny permits for the siting and construction of electrical transmission facilities.”).

Duly applied to Order 1000, “the standard tools of interpretation,” including a straightforward reading of the regulation’s text, point to the conclusion that the Order does not preempt state ROFRs. *Kisor v. Wilkie*, 139 S. Ct. 2400, 2414 (2019). In addition, even if the text of Order 1000 is “genuinely ambiguous” with respect to preemption, FERC’s interpretation of the regulation merits the Court’s deference. *See id.* That interpretation explicitly forecloses Appellant’s contrary contention; FERC has repeatedly made clear that Order 1000 “purposely . . . addresses only rights of first refusal that are created by provisions in Commission-jurisdictional tariffs or agreements” and that nothing in the Order “limit[s], preempt[s], or otherwise affect[s] state or local laws or regulations with respect to construction of transmission facilities.” Order 1000 at ¶ 253 n.231; *see also id.* at ¶ 287 (acknowledging “that there may be

restrictions on the construction of transmission facilities by nonincumbent transmission providers under rules or regulations enforced by other jurisdictions”); Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, 139 FERC 61132, ¶ 415 (2012) (Order 1000-A) (affirming Order 1000’s limited scope).

B. FERC could not have preempted Vandalia’s statutory ROFR because the ROFR “aims at” a target within Vandalia’s state jurisdiction.

In adopting Order 1000, FERC thus emphasized that it had no intention of transgressing the FPA’s “bright line” between federal and state jurisdiction. *FPC v. S. Cal. Edison Co.*, 376 U.S. 205, 215–16 (1964). The agency apparently understood, as this Court ought to affirm, that Order 1000 did and could not preempt a state law, such as Vandalia’s NTPA, that “aims” only at ensuring stable and amenable in-state transmission service. *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 385 (2015). This is so because the FPA does not reserve the regulation of transmission exclusively to FERC’s jurisdiction but instead empowers each state “to retain significant control over local matters” that were traditionally the prerogative thereof, including but not limited to the siting and construction of transmission facilities within a state. *See New York v. FERC*, 535 U.S. at 22-24; *Piedmont Env’t Council v. FERC*, 558 F.3d at 310; 16 U.S.C. § 824(b)(1).

To abrogate these “historic police powers” would require evidence that their supersession by the FPA was “the clear and manifest purpose of Congress.” *Hillsborough Cnty. v. Automated Med. Laboratories, Inc.*, 471 U.S. 707, 715 (1985) (quoting *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977)) (explaining the Supreme Court’s presumption against preemption). No such evidence is available here. On the contrary, by passing the Energy Policy Act of 2005, which empowered FERC “to issue permits for the construction or modification of transmission facilities” in a designated “national interest electric transmission corridor” under certain enumerated

conditions, 16 U.S.C. § 824p(a), Congress “demonstrated . . . that it knew how to provide for” FERC to exercise regulatory authority over transmission facilities. *Meghrig v. KFC Western, Inc.*, 516 U.S. 479, 485 (1996). Had Congress intended, at any point, to universally preempt states’ traditional authority over such matters, it could and presumably would have done so explicitly, via statute. *Cf. Whitman v. American Trucking Ass’n, Inc.*, 531 U.S. 457, 468 (2001) (“Congress . . . does not . . . hide elephants in mouseholes.”).

Appellant’s insistence that the NTPA “affects—even substantially—the” construction of a PJM-solicited project “is of no legal consequence.” *FERC v. Elec. Power Supply Ass’n*, 577 U.S. 260, 281 (2016), *as revised* (Jan. 28, 2016). Because the realms of federal and state jurisdiction under the FPA “are not hermetically sealed from each other,” the fact that regulation in one has “natural consequences” in the other is not sufficient grounds for invalidation. *Id.*

Given that the statutory ROFR extends for only eighteen months, it at most *delays*, rather than precludes, construction. Such inconvenience is a far cry from the actual impossibility that a finding of preemption would require here, even assuming that the competitive solicitation was indeed an exercise of FERC’s jurisdiction that necessitated “compliance.” *See Oneok*, 575 U.S. at 377 (“[C]onflict pre-emption exists where ‘compliance with both state and federal law is impossible’” (quoting *California v. ARC Am. Corp.*, 490 U.S. 93, 100 (1989))).

In short, Appellant’s claim founders at each of the three steps of the Supreme Court’s prevailing approach to questions of federal-state preemption in the energy market. *See* Matthew R. Christiansen & Joshua C. Macey, *Long Live the Federal Power Act’s Bright Line*, 134 Harv. L. Rev. 1360, 1369-70 (2021) (“Under [the Court’s] framework, every dispute involving the FPA’s jurisdictional line can be resolved by answering no more than three questions.”).

First, the NTPA is not “unambiguously *directed at*” a matter solely in FERC’s jurisdiction. *Oneok*, 575 U.S. at 386 (quoting *Nw. Cent. Pipeline Corp. v. State Corp. Comm’n*, 489 U.S. 493, 514 (1989)). Second, the NTPA does not “seek to achieve ends . . . through regulatory means that intrude on FERC’s authority,” *Hughes*, 578 U.S. at 164. Instead, the NTPA’s target is in fact the regulation of transmission facilities within the state, which the FPA left squarely under Vandalia’s authority. *See* 16 U.S.C. § 824(b)(1). A judicial inquisition in search of some other, contrary legislative purpose that might yet warrant preemption would be a “misadventure[]” risking “significant federal intrusion into state sovereignty.” *Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 1905-06 (2019). Thirdly and finally, the NTPA has not rendered compliance with FERC regulations actually impossible. *See Oneok*, 575 U.S. at 377; *see also Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354, 373-75 (1988) (holding that a state regulation was preempted because it irreconcilably contradicted a proper exercise of FERC jurisdiction).

Because the NTPA coheres with the FPA’s structure of cooperative federalism and the Constitution, the Court should affirm the dismissal of Appellant’s preemption claim.

IV. Vandalia’s statutory ROFR does not violate the “dormant” Commerce Clause.

Appellant also accuses Vandalia’s statutory ROFR of violating the “dormant” Commerce Clause. According to this controversial doctrine, the Supreme Court’s espousal of which has been subject to “vigorous and thoughtful critiques,” *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 139 S. Ct. 2449, 2460 (2019), the Commerce Clause both empowers Congress to “regulate Commerce . . . among the several States,” U.S. Const. art. I, § 8, cl. 3, and imposes an “implicit restraint on state authority” to do the same. *United Haulers Ass’n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338 (2007). Typically, applications of this doctrine forbid states from either “discriminat[ing] against” or “impos[ing] undue burdens on interstate commerce.” *S. Dakota*

v. Wayfair, Inc., 138 S. Ct. 2080, 2090-91 (2018). Because Vandalia’s statutory ROFR contravenes neither of these “two primary principles,” it is not susceptible to invalidation under the dormant Commerce Clause. *Id.*

A. Appellant’s discrimination claim is inapposite because ACES and the incumbents are not similarly situated.

In *General Motors Corp. v. Tracy*, the Supreme Court clarified that “any notion of discrimination” under the dormant Commerce Clause “assumes a comparison of substantially similar entities.” 519 U.S. 278 (1997). If the entities are differently situated from the outset, they may “continue to [be] so even if the supposedly discriminatory burden were removed,” thereby ruling out any role the dormant Commerce Clause might otherwise have played. *Id.* at 298-99.

Here, as in *Tracy*, ACES and the incumbents “serve different markets” and are not “substantially similar entities . . . similarly situated for constitutional purposes.” *Id.* Unlike the incumbents, ACES does not provide “public electricity services to the public for compensation in Vandalia” and is not a public utility. *See* Vandalia Pub. Serv. Comm’n, Right of Way Order 3 (Dec. 13, 2022). It therefore “entirely” serves the wholesale market, whereas the incumbents are also active in the retail market. *Id.* Furthermore, because ACES is not and will not be a public utility in Vandalia, ACES cannot use preexisting rights of way in the state. This reality, quite apart from the NTPA, practically forecloses the ability of ACES to build Mountaineer Express. Thus, “eliminating the” statutory ROFR “would not serve the dormant Commerce Clause’s fundamental objective.” *Tracy*, 519 U.S. at 299. Appellant’s claim of “discrimination under the Commerce Clause . . . must therefore fail.” *Id.* at 310.

B. Vandalia’s statutory ROFR is neither facially nor effectively discriminatory.

Regardless of the applicability of *Tracy*, it is clear that Vandalia’s statutory ROFR is not “designed to benefit in-state economic interests by burdening out-of-state competitors.” *Dep’t of Revenue v. Davis*, 553 U.S. 328, 338 (2008) (quoting *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273–274 (1988)). The statute grants ROFRs to incumbents without any regard to the state in which they are incorporated or in which they carry out the majority of their commercial activities. The NTPA is “applie[d] evenhandedly to all entities” based only on incumbency, “regardless of whether they are [Vandalia]-based entities or based elsewhere.” *LSP Transmission Holdings, LLC v. Sieben*, 954 F.3d 1018, 1028 (8th Cir. 2020), *cert. denied*, 141 S.Ct. 1510 (2021). Thus, the NTPA is not discriminatory “on its face.” *Wyoming v. Oklahoma*, 502 U.S. 437, 456 (1992).

Nor is the NTPA discriminatory “in practical effect.” *Id.* Upon its adoption, the law granted a ROFR exclusively to two out-of-state entities because those two entities were the only incumbents in Vandalia. Both LastEnergy and MAPCo are incorporated and headquartered outside Vandalia, and both “own and operate facilities in states other than” Vandalia. *LSP Transmission Holdings, LLC*, 954 F.3d at 1028. Meanwhile, Appellant ACES is both incorporated and headquartered in Vandalia. In effect, the NTPA benefits economic actors with “principal operations” *outside* Vandalia. *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27, 42 (1980). Any burden the ROFR does impose is borne by nonincumbents equally, without regard to the extent of a given nonincumbent’s “contacts with the local economy.” *Id.* Especially “since there are no local” (that is, no Vandalia-based) incumbents at all, Appellant’s “claims of disparate treatment between interstate and local commerce [are] meritless.” *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 125 (1978). For the same reasons, it further strains credulity to suggest that the NTPA gives effect to “simple economic protectionism,” *City of Philadelphia v. New Jersey*, 437 U.S. 617, 624

(1978), or enacts “differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.” *United Haulers Ass’n, Inc.*, 550 U.S. at 338 (quoting *Oregon Waste Systems, Inc. v. Dep’t of Env’t Quality*, 511 U.S. 93, 99 (1994)).

Given that the NTPA is a non-protectionist, non-discriminatory exercise of “local autonomy” consistent with the Framers’ federalism, it cannot be deemed “*per se* invalid” under the dormant Commerce Clause. *Dep’t of Revenue v. Davis*, 553 U.S. at 338 (quoting *Oregon Waste Systems, Inc.*, 511 U.S. at 99).

C. Vandalia’s statutory ROFR does not unduly burden interstate commerce.

It is profoundly uncertain when, if at all, a “genuinely nondiscriminatory” state law like the NTPA may be subjected to potential invalidation under the dormant Commerce Clause for unduly burdening interstate commerce. *See General Motors Corp. v. Tracy*, 519 U.S. at 298 n.12 (noting that the rule of law is so unclear that “several cases that have purported to apply the undue burden test . . . arguably turned in whole or in part on” discrimination). Yet Vandalia’s statutory ROFR must survive even if the Court deems it appropriate to subject the NTPA to such “further inquiry.” *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573, 579 (1986). This is so because the statutory ROFR does not impose any burdens on interstate commerce capable of being characterized as “clearly excessive in relation to the putative local benefits.” *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

The Supreme Court has consistently applied the *Pike* balancing test in a deferential manner such that laws scrutinized thereunder “frequently survive.” *Dep’t of Revenue v. Davis*, 553 U.S. at 339. Laws that are invalidated tend to entail significant disruptions of existing instrumentalities of interstate commercial transport or expansive assertions of regulatory authority over out-of-state actors. *See, e.g., S. Pac. Co. v. Arizona*, 325 U.S. 761, 770 (1945); *Edgar v. MITE Corp.*, 457 U.S.

624, 643 (1982). Such burdens are both more substantial and more concrete than the uncertainty and inconvenience of which ACES here complains.

Notably, the NTPA does not erect a permanent barrier to the construction of transmission facilities by nonincumbents. *Compare LSP Transmission Holdings, LLC*, 954 F.3d at 1023 (affirming the validity of a temporally limited ROFR) with *NextEra Energy Cap. Holdings, Inc. v. Lake*, 48 F.4th 306, 326 (2022) (invalidating an indefinite ROFR). The statute thus represents the narrowest and least burdensome means by which Vandalia may secure the local benefits at stake. There are no other means with which Vandalia’s local interests “could be promoted as well with a lesser impact on interstate activities.” *Pike*, 397 U.S. at 142.

Even if the NTPA did plausibly impose a burden substantial enough to render a *Pike* claim colorable, it would be decisively outweighed by the “legitimate local purpose[s]” that the statute advances. *Pike*, 397 U.S. at 142. Those purposes include ensuring the safety and stability of transmission facilities within the state, reinforcing Vandalia’s practical capacity to exercise its traditional regulatory authority over those facilities, and minimizing conflicts and costs associated with right-of-way planning. *Cf. LSP Transmission Holdings, LLC*, 954 F.3d at 1031 (describing the preservation of “the historically-proven status quo for the construction and maintenance of electric transmission lines” as a “goal within the purview of a State’s legitimate interest in regulating . . . transmission”); *Maine v. Taylor*, 477 U.S. 131, 151 (1986) (“As long as a State does not needlessly obstruct interstate trade . . . it retains broad regulatory authority to protect the health and safety of its citizens and the integrity of its natural resources.”).

Vandalia is not alone in recognizing the legitimacy of these policy objectives. Congress, for its part, “has never questioned the need for” some degree of state involvement in the energy sector, *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 94 (1987), and has designed the

applicable statutory framework accordingly such that the “federal-state relationship” in the field is “marked by interdependence.” *Hughes*, 578 U.S. at 167 (Sotomayor, J., concurring). The Court should “not second-guess [this] legislative judgment” by abrogating Vandalia’s “power to regulate” here. *Kassel v. Consol. Freightways Corp. of Delaware*, 450 U.S. 662, 670 (1981).

Given that Vandalia’s timebound ROFR is nondiscriminatory and does not impose burdens that are “clearly excessive in relation to the putative local benefits,” it does not violate the dormant Commerce Clause. *Pike*, 397 U.S. at 142. Accordingly, this Court should affirm the dismissal of Appellant’s dormant Commerce Clause claim.

Applicant Details

First Name **Peter**
 Last Name **Povilonis**
 Citizenship Status **U. S. Citizen**
 Email Address povilonis@uchicago.edu
 Address

Address

Street
5541 S. Everett Ave
City
Chicago
State/Territory
Illinois
Zip
60540
Country
United States

Contact Phone Number **630-818-0089**

Applicant Education

BA/BS From **University of Toronto, Canada**
 Date of BA/BS **June 2015**
 JD/LLB From **The University of Chicago Law School**

<https://www.law.uchicago.edu/>

Date of JD/LLB **June 3, 2023**

Class Rank **School does not rank**

Does the law school have a Law Review/Journal? **Yes**

Law Review/Journal **No**

Moot Court Experience **Yes**

Moot Court Name(s) **UChicago Hilton Moot Court 2021 Competition**

UCLA 1L Moot Court 2021 Competition

UCLA Mock Trial 2020 Competition

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships **Yes**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Patton, Stephen
stephen.patton@kirkland.com
(847) 846-5405

Bradley, Curtis
bradleyca@uchicago.edu

Leiter, Brian
bleiter@uchicago.edu
773-702-0953

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Peter Povilonis

630-818-0089 • povilonis@uchicago.edu • 5541 S. Everett Ave, Chicago, IL 60637

June 10, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510-1915

Dear Judge Walker:

I recently graduated with Honors from the University of Chicago Law School, and I have a profound interest in becoming a judicial clerk in your chambers for the 2024 term. This fall, I plan to work for a year in litigation at Kirkland & Ellis in Washington, D.C. I have a lot of friends in Virginia, and I would enjoy living in the state. I am especially interested in becoming your clerk because of your experience as an AUSA, as I aspire to become a prosecutor in the future. Working in your chambers will provide an excellent opportunity to learn from your experience, as well as generally enhance my understanding of judicial decisionmaking. By using my acute legal judgment and academic research and writing skills, I will be able to produce effective analysis beneficial to the functioning of the court.

My legal judgment has been enhanced through my work experience. For example, during my externship with District Court Judge Christina A. Snyder in the Central District of California, I researched and drafted an order on a compassionate release motion. After collaborating with the Judge and clerks, we concluded that the defendant's failure to exhaust his legal remedies precluded the Court from granting the motion—the same holding the Ninth Circuit delivered the following week. Moreover, working for the Cook County State's Attorney's Office also enhanced my legal judgment. There, I had the experience stepping up as 1st chair prosecutor for six separate misdemeanor trials. I also argued against two Motions to Suppress regarding statements made after an arrest, winning both on directed verdict by proving that there was probable cause for the officers to make a traffic stop.

Furthermore, my academic experience has strongly attuned my research and writing skills, where I have received sufficient training in analyzing complex arguments and rewriting them in succinct form. As a research assistant for Prof. Jennifer Nou, I extracted from hundreds of sources on 'subdelegation' a consistent narrative of the state of the academic literature, reporting it in a succinct, seven-page memorandum. Moreover, my background in philosophy trained me to comprehend, critique, and expand on complex jurisprudential issues. For example, at a legal philosophy conference hosted by the University of Sydney Law School, I presented a paper discussing the normative role of 'consent' in law and articulating the deficiencies of Joseph Raz's conception. Overall, I believe these experiences have prepared me to deliver high caliber work product as a judicial clerk in your chambers.

My application includes a resume; law school, undergraduate, and graduate transcripts; two writing samples; and three letters of recommendation. I look forward to the opportunity to discuss my interest and further demonstrate my qualifications. Thank you for your time and consideration.

Sincerely,

Peter Povilonis

Peter Povilonis

630-818-0089 • povilonis@uchicago.edu • 5541 S. Everett Ave, Chicago, IL 60637

Education

The University of Chicago Law School, Chicago, Illinois

J.D. with Honors, June 2023

Activities: Hilton Moot Court Board, *Vice President*
 Hilton Moot Court Competition (2021 & 2022)
 Research Assistant for Prof. Brian Leiter (Fall 2022–present)
 Research Assistant for Prof. Farah Peterson (Winter 2022)
 Research Assistant for Prof. Jennifer Nou (Fall 2021)

UCLA School of Law, Los Angeles, California

J.D. candidate 2020–2021 (transferred)

Activities: Internal Mock Trial Competition (2020), *4th Place for 1Ls, 6th overall*
 1L Moot Court Competition (2021), *Top Percentile: 75th-99th*
 Accepted onto Law Review Staff
 Criminal Justice Society & Public Defense Boot Camp

Humboldt University of Berlin, Berlin, Germany

M.A. in Philosophy with a Concentration in Practical Philosophy, November 2019

Thesis Title: *Traditional and Critical Theory: Is Horkheimer's Theory still Relevant?*

Selected Conference Presentations:

“The Reason of Non-Consent: Rethinking *Volenti Non Fit Injuria*,” Sydney, Australia, July 2019
 “Authoritarian Personality: Does Recognition Lead to Normalization?” Rome, Italy, May 2019

University of Toronto, Toronto, Canada

B.A. in Philosophy, May 2015

Honors: Dean's List Scholar, Honors with High Distinction
 Activities: *Zeitgeist* Student Journal, *Lead Editor*

Experience

Kirkland & Ellis LLP, Washington, D.C.

Associate, starting October 2023

- Return offer accepted

Summer Associate, May 2022–July 2022

- Researched and drafted memo regarding the evidentiary privileges of Attorney Generals as plaintiffs in civil suits

Cook County State's Attorney's Office, Chicago, Illinois

Law Clerk, August 2022–September 2022

- Served as acting 1st chair prosecutor for daily call sheets, six misdemeanor trials, and two Motions to Suppress
- Prepared witnesses and evidence for trial, negotiated pre-trial conferences, executed discovery requests

New Civil Liberties Alliance, Washington, D.C.

Ruth Bader Ginsburg Fellow, May 2022–July 2022

- Engaged in eight roundtable discussions and one active debate in defense of the administrative state

United States District Court for the Central District of California, Los Angeles, California

Judicial Extern for the Hon. Christina A. Snyder, June 2021–July 2021

- Individually wrote first drafts of orders given by the Judge, including a ruling on a 12(b)(6) motion and a compassionate release motion (available upon request)
- Drafted clear and succinct summaries of each incoming case for the Judge

Stone Brewing Co., Berlin, Germany

Event Planner, Brewery Coordinator, Bartender, March 2016–November 2019

- Managed orders in the brewery, oversaw can and keg fillings, translated new menus from German into English

Languages & Interests

Languages: German (fluent with *TestDaF* certification), Spanish (intermediate), French (intermediate)

Interests & Skills: Rugby, Sailing, Drums, Certified Beer Sommelier

NAME: POVILONIS, PETER
 UCLA ID: 905632828
 BIRTHDATE: 08/06/XXXX

UNIVERSITY OF CALIFORNIA, LOS ANGELES
 LAW ACADEMIC TRANSCRIPT

PAGE 1 OF 1

PROGRAM OF STUDY

ADMIT DATE: 08/24/2020
 SCHOOL OF LAW
 MAJOR: LAW

DEGREES | CERTIFICATES AWARDED

NONE AWARDED

PREVIOUS DEGREES

NONE REPORTED

CALIFORNIA RESIDENCE STATUS: NONRESIDENT

FALL SEMESTER 2020

MAJOR: LAW

INTRO LEGAL ANALYSIS	LAW 101	1.0	0.0	P
LGL RSCH & WRITING	LAW 108A	2.0	0.0	IP
MULTIPLE TERM - IN PROGRESS				
CRIMINAL LAW	LAW 120	4.0	16.0	A
TORTS	LAW 140	4.0	16.0	A
CIVIL PROCEDURE	LAW 145	4.0	13.2	B+
		<u>ATM</u>	<u>PSD</u>	<u>PTS</u> <u>GPA</u>
TERM TOTAL		13.0	13.0	45.2 3.767

SPRING SEMESTER 2021

CONTRACTS	LAW 100	4.0	16.0	A
LGL RSCH & WRITING	LAW 108B	5.0	18.5	A-
END OF MULTIPLE TERM COURSE				
PROPERTY	LAW 130	4.0	14.8	A-
CONSTITUT LAW I	LAW 148	4.0	16.0	A
CONSTITUTNL CRISES	LAW 165	1.0	0.0	P
		<u>ATM</u>	<u>PSD</u>	<u>PTS</u> <u>GPA</u>
TERM TOTAL		18.0	18.0	65.3 3.841

LAW TOTALS

	<u>ATM</u>	<u>PSD</u>	<u>PTS</u>	<u>GPA</u>
PASS/UNSATISFACTORY TOTAL	2.0	2.0	N/A	N/A
GRADED TOTAL	29.0	29.0	N/A	N/A
CUMULATIVE TOTAL	31.0	31.0	110.5	3.810
TOTAL COMPLETED UNITS	31.0			

END OF RECORD
 NO ENTRIES BELOW THIS LINE

THIS INFORMATION HAS BEEN RELEASED IN ACCORDANCE WITH THE FEDERAL FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) AND CANNOT BE FURTHER DISCLOSED WITHOUT THE PRIOR WRITTEN CONSENT OF THE STUDENT.



Authentication
 This official transcript is printed on security paper with a blue fading background, the Seal of the UCLA Office of the Registrar, and the signature of the Senior Director of Academic Services and Registrar, Brian Hansen.



Name: Peter Povilonis

Student ID: 12338463

University of Chicago Law School

Degree: Doctor of Law
 Confer Date: 06/03/2023
 Degree GPA: 179.676
 Degree Honors: With Honors
 J.D. in Law

Degrees Awarded

Program: Law School
 Start Quarter: Autumn 2021
 Current Status: Completed Program
 J.D. in Law

Academic Program History

External Education

University of Toronto
 Toronto, Ontario Canada
 Bachelor of Arts 2015

Humboldt University
 Berlin, Germany
 Master of Arts 2019

CREDIT AWARDED FOR ACADEMIC WORK DONE AT UNIVERSITY OF CALIFORNIA AT LOS ANGELES,
 2020-2021 37

Beginning of Law School Record

		Autumn 2021		Attempted	Earned	Grade
Course	Description					
LAWS 43230	Public International Law Thomas Ginsburg			3	3	176
LAWS 46101	Administrative Law Jennifer Nou			3	3	177
LAWS 53218	Law and Public Policy: Case Studies in Problem Solving Stephen Patton			2	2	183
LAWS 63402	Workshop: Public Law and Legal Theory Sharon Fairley John Rappaport Sonja Starr Ryan Doerfler Thomas Ginsburg Hajin Kim Joshua C. Macey			0	0	P
LAWS 63612	Workshop: Constitutional Law Bridget Fahey Farah Peterson			1	1	179
		Winter 2022		Attempted	Earned	Grade
Course	Description					
LAWS 40201	Constitutional Law II: Freedom of Speech Geoffrey Stone			3	3	177
LAWS 41601	Evidence Brian Leiter			3	3	182
LAWS 47201	Criminal Procedure I: The Investigative Process Sharon Fairley			3	3	177
LAWS 63402	Workshop: Public Law and Legal Theory Sharon Fairley John Rappaport Sonja Starr Ryan Doerfler Thomas Ginsburg Hajin Kim Joshua C. Macey			1	1	P
LAWS 63612	Workshop: Constitutional Law Bridget Fahey Farah Peterson			1	1	179



Name: Peter Povilonis

Student ID: 12338463

University of Chicago Law School

Spring 2022					Spring 2023						
Course		Description	Attempted	Earned	Grade	Course		Description	Attempted	Earned	Grade
LAWS	43269	Foreign Relations Law Curtis Bradley	3	3	180	LAWS	42801	Antitrust Law Eric Posner	3	3	178
LAWS	47301	Criminal Procedure II: From Bail to Jail Sharon Fairley	3	3	181	LAWS	43201	Comparative Legal Institutions Thomas Ginsburg	3	3	180
LAWS	47411	Jurisprudence I: Theories of Law and Adjudication Brian Leiter	3	3	181	LAWS	43218	Public Choice and Law Saul Levmore	3	3	182
LAWS	53339	Advanced Evidence: Key Legal Principles and Their Practical Application Stephen Patton	2	2	180	LAWS	57013	Canonical Ideas in American Legal Thought Req Meets Substantial Research Paper Requirement Designation:	2	2	180
LAWS	63402	Workshop: Public Law and Legal Theory Sharon Fairley John Rappaport Sonja Starr Ryan Doerfler Thomas Ginsburg Hajin Kim Joshua C. Macey	0	0	P			William Baude Adam Chilton			
								Honors/Awards Completed Pro Bono Service Initiative			
				</							

End of University of Chicago Law School

Autumn 2022					
Course		Description	Attempted	Earned	Grade
LAWS	41101	Federal Courts Curtis Bradley	3	3	181
LAWS	43284	Professional Responsibility and the Legal Profession Anna-Maria Marshall	3	3	179
LAWS	46501	Federal Criminal Law Sharon Fairley	3	3	177
LAWS	57013	Canonical Ideas in American Legal Thought William Baude Adam Chilton	3	3	180
LAWS	95030	Moot Court Boot Camp Rebecca Horwitz Madeline Lansky	2	2	P

Winter 2023					
Course		Description	Attempted	Earned	Grade
LAWS	42301	Business Organizations M. Todd Henderson	3	3	182
LAWS	53264	Advanced Legal Research Scott Vanderlin	3	3	181
LAWS	57013	Canonical Ideas in American Legal Thought William Baude Adam Chilton	2	2	180
LAWS	93499	Independent Research: Stare Decisis In Name Only	3	3	181
Req		Meets Substantial Research Paper Requirement			
Designation:		Brian Leiter			

OFFICIAL ACADEMIC DOCUMENT



Key to Transcripts of Academic Records

1. Accreditation: The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit <http://csl.uchicago.edu/policies/disclosures>.

2. Calendar & Status: The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

3. Course Information: Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

4. Credits: The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

5. Grading Systems:

Quality Grades

Grade	College & Graduate	Business	Law
A+	4.0	4.33	
A	4.0	4.0	186-180
A-	3.7	3.67	
B+	3.3	3.33	
B	3.0	3.0	179-174
B-	2.7	2.67	
C+	2.3	2.33	
C	2.0	2.0	173-168
C-	1.7	1.67	
D+	1.3	1.33	
D	1	1	167-160
F	0	0	159-155

Non-Quality Grades

I	Incomplete: Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB).
IP	Pass (non-Law): Mark of I changed to P (Pass). See 8 for Law IP notation.
NGR	No Grade Reported: No final grade submitted
P	Pass: Sufficient evidence to receive a passing grade. May be the only grade given in some courses.
Q	Query: No final grade submitted (College only)
R	Registered: Registered to audit the course
S	Satisfactory
U	Unsatisfactory
UW	Unofficial Withdrawal
W	Withdrawal: Does not affect GPA calculation
WP	Withdrawal Passing: Does not affect GPA calculation
WF	Withdrawal Failing: Does not affect GPA calculation
	Blank: If no grade is reported after a course, none was available at the time the transcript was prepared.

Examination Grades

H	Honors Quality
P*	High Pass
P	Pass

Grade Point Average: Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

6. Academic Status and Program of Study: The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

7. Doctoral Residence Status: Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a

University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

Scholastic Residence: the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)

Research Residence: the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000.)

Advanced Residence: the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)

Active File Status: a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)

Doctoral Leave of Absence: the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.

Extended Residence: the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled *Pro Forma* does not extend the maximum year limit on registration.

8. Law School Transcript Key: The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)
0.5%
High Honors (180.5+)(pre-2002 180+)
7.2%
Honors (179+)(pre-2002 178+)
22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

9. FERPA Re-Disclosure Notice: In accordance with U.S.C. 438(6)(4)(8)(The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

Office of the University Registrar
University of Chicago
1427 E. 60th Street
Chicago, IL 60637
773.702.7891

For an online version including updates to this information, visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

Revised 09/2016



UNIVERSITY OF
TORONTO

TRANSCRIPT OF CONSOLIDATED ACADEMIC RECORD

TORONTO, ONTARIO, CANADA

Page 1 of 2

NAME: **Povilonis, Peter**

ISSUED TO: Peter Povilonis
Flottwellstr. 3A
Berlin 10785
Germany

RECORD AS OF: 2017-04-19

STUDENT NUMBER: 999480896

OEN: 790875579

BIRTH DAY/MONTH: 06/08

REGISTRATION HISTORY

2012 Fall - 2015 Winter : Faculty of Arts and Science

GRADUATION SUMMARY

HONOURS BACHELOR OF ARTS CONFERRED - JUNE 2015 WITH HIGH DISTINCTION

Faculty of Arts and Science

Completed - 2015 Winter - SPECIALIST - PHILOSOPHY

2013 Winter-Dean's List Scholar

2014 Winter-Dean's List Scholar

2015 Winter-Dean's List Scholar

CRS CODE TITLE	WGT
FSL121Y1 French Lang I	1.00
Transfer Credit - Equivalent TC - Laval Univ (2013S)	
NMC270H1 Mid East Christians	0.50
Transfer Credit - Equivalent Taylor Univ, IL	
PHL275H1 Intro to Ethics	0.50
Transfer Credit - Equivalent Taylor Univ, IL	
PSY210H1 Intro Development	0.50
Transfer Credit - Equivalent Taylor Univ, IL	
CJS2*** Transfer Credit - Equivalent Jewish Thought & Practice (BR=2) Taylor Univ, IL	0.50
ENV2*** Transfer Credit - Equivalent (BR=4) Taylor Univ, IL	0.50
NMC1*** Transfer Credit - Equivalent Biblical Literature (BR=1) Taylor Univ, IL	0.50
NMC3*** Transfer Credit - Equivalent Cultural Background of the Bible (BR=3) Taylor Univ, IL	0.50
NMC3*** Transfer Credit - Equivalent Physical Settings of the Bible (BR=3) Taylor Univ, IL	0.50
PHL2*** Transfer Credit - Equivalent (BR=2) Taylor Univ, IL	0.50
PMU1*** Transfer Credit - Equivalent Chemistry for Living Taylor Univ, IL	0.50
POL2*** Transfer Credit - Equivalent Palestinian Soc. & Politics (BR=3) Taylor Univ, IL	0.50

Credits earned: 6.50

2012 FALL - BACHELOR'S DEGREE PROGRAM - ST. MICHAEL'S COLLEGE

SESSIONAL GPA: 3.90 CUMULATIVE GPA: 3.90

CRS CODE TITLE	WGT	MRK	GRD	CRS	AVG
FSL100H1 French for Beginners I	0.50	88	A	B-	
HIS243H1 Europe 1450 - 1648	0.50	82	A-	C+	
PHL200Y1 Ancient Philosophy	1.00		IPR		
PHL210Y1 17-18th Cent Philsphy	1.00		IPR		
PHL217H1 Intro to Cont Phil	0.50	85	A	B	

Credits earned: 1.50

2013 WINTER - BACHELOR'S DEGREE PROGRAM - ST. MICHAEL'S COLLEGE

SESSIONAL GPA: 3.87 ANNUAL GPA: 3.88 CUMULATIVE GPA: 3.88

STATUS: IN GOOD STANDING

CRS CODE TITLE	WGT	MRK	GRD	CRS	AVG
FSL102H1 Intro French	0.50	87	A	B-	
PHL200Y1 Ancient Philosophy	1.00	84	A-	C+	
PHL210Y1 17-18th Cent Philsphy	1.00	86	A	C+	
PHL232H1 Knowledge & Reality	0.50	81	A-	C	
PHL245H1 Mod Symbolic Logic	0.50	88	A	B-	

Credits earned: 3.50

2013 FALL - BACHELOR'S DEGREE PROGRAM - ST. MICHAEL'S COLLEGE

SESSIONAL GPA: 4.00 CUMULATIVE GPA: 3.91

CRS CODE TITLE	WGT	MRK	GRD	CRS	AVG
GER411H1 Intro to Critical Theory	0.50	90	A+	B+	
PHL314H1 Kant	0.50	88	A	C+	
RLG301H1 Freud on Religion	0.50	90		B	
RLG310Y1 Modern Atheism	1.00		IPR		
SMC322H1 Xtianity & Feminism	0.50	88	A	B-	

Credits earned: 2.00

2014 WINTER - BACHELOR'S DEGREE PROGRAM - ST. MICHAEL'S COLLEGE

SESSIONAL GPA: 4.00 ANNUAL GPA: 4.00 CUMULATIVE GPA: 3.94

STATUS: IN GOOD STANDING

CRS CODE TITLE	WGT	MRK	GRD	CRS	AVG
PHL316H1 Hegel	0.50	86	A	B-	
PHL322H1 Contmp Continent Phil	0.50	88	A	B-	
PHL323H1 Soc & Cultural Theory	0.50	88	A	B	
RLG310Y1 Modern Atheism	1.00	87	A	B-	
VIC401H1 Special Topics Critical Theory in Context: The French-German Connection	0.50	85	A	A-	

Credits earned: 3.00

2014 FALL - BACHELOR'S DEGREE PROGRAM - ST. MICHAEL'S COLLEGE

SESSIONAL GPA: 4.00 CUMULATIVE GPA: 3.95

CRS CODE TITLE	WGT	MRK	GRD	CRS	AVG
FCS390H1 FCS Special Topics II	0.50	87	A	*	
GER100Y1 Introduction to German I	1.00		IPR		
PHL315H1 Topics in 19th C Phil	0.50	88	A	B+	
PHL351H1 Phil of Language	0.50	85	A	B+	
VIC401H1 Special Topics Freud: Case Histories	0.50	88	A	*	

Credits earned: 2.00

In March 2015, the University of Toronto was affected by a labour disruption. As a result, some students were graded on the University's approved Credit/No Credit scale (see transcript key), rather than receiving a letter or numeric grade, for courses completed in Winter 2015. For more information, see: <http://www.transcripts.utoronto.ca/guide>



UNIVERSITY OF
TORONTO

TRANSCRIPT OF CONSOLIDATED ACADEMIC RECORD

TORONTO, ONTARIO, CANADA

Page 2 of 2

NAME: **Povilonis, Peter**ISSUED TO: **Peter Povilonis**RECORD AS OF: **2017-04-19**STUDENT NUMBER: **999480896**OEN: **790875579**BIRTH DAY/MONTH: **06/08**

2015 WINTER - BACHELOR'S DEGREE PROGRAM - ST. MICHAEL'S COLLEGE

SESSIONAL GPA: 4.00 ANNUAL GPA: 4.00 CUMULATIVE GPA: 3.96

STATUS: IN GOOD STANDING

CRS CODE	TITLE	WGT	MRK	GRD	CRS	AVG
GER100Y1	Introduction to German I	1.00	92	A+	B+	
PHL310H1	The Rationalists	0.50	94	A+	B-	
PHL326H1	Wittgenstein	0.50	91	A+	B+	
PHL338H1	Jewish Philosophy	0.50	90	A+	B+	
RLG422H1	Kant's Theory of Rel	0.50	95	A+	*	

Credits earned: 3.00

Other Symbols and Notations:

- ADD** Additional course, taken for credit. Included in grade point averages.
(note: the following symbols are not used in calculating grade point averages.)
- AEG** Aegrotat standing granted on the basis of term work and medical or similar evidence. Course credit granted.
- DNW** Did not write/did not attend/did little work.
- EXT** Extra course, not for credit.
- GWR** Grade withheld pending review.
- INC** Incomplete.
- IPR** In progress.
(IPR will also appear if the course has not yet started or the course has finished but an approved grade is not yet available.)
- LWD** Late withdrawal without academic penalty.
- NGA** No grade available.
- SDF** Standing deferred on the basis of incomplete course work because of medical or similar reasons.
- WDR** Withdrawn without academic penalty.
- XMP** Exemption granted on the basis of credit for work done elsewhere. Course credit granted.

Candidacy Achieved

A student who has completed all program requirements for the PhD degree exclusive of thesis research will be considered a candidate in the School of Graduate Studies.

Averages Information:

The following types of averages may appear:

- GPA** Grade Point Average*
(*for CTEP programs, the GPA does not include performance in B.Ed. courses)
- ACCA** GPA on the Academic Activity Component of the Bachelor of Physical Health and Education
- CICA** GPA on the Curriculum and Instruction Component of the Bachelor of Education and Diploma in Technical Education
- CTPA** GPA on the Bachelor of Education Activity Component of the Concurrent Teacher Education Program
- FNCA** GPA on Foundations Component of the Bachelor of Education and Diploma in Technical Education
- PACA** GPA on the Physical Activity Component of the Bachelor of Physical and Health Education
- PERS** Percentage Average
- ACCUM. AVG**
Accumulated Average

Awards Information:

Academic awards information is not listed on University of Toronto transcripts.

Academic Sessions:

- Fall Session (September - December)
- Winter Session (January - April)
- Summer Session (May - August)

Course Credits:

A course with a weight of 1.00 equals 6 semester hours.

Course Average:

Course average is shown for undergraduate courses with a size of 12 or more and is expressed as a letter grade corresponding to the refined letter grade scale. The symbol "*" is used to indicate an undergraduate course with fewer than 12 students. A "blank" is used to indicate that a course average has not been calculated.

End of Guide

University of Toronto Guide to Transcript

Effective September 1998

Grade Meanings	Undergraduate Grade Scale		Grade Point Value	Graduate Grade Scale	
	Refined Letter Grade Scale	Numerical Scale of Marks		Truncated Letter Grade Scale	Numerical Scale of Marks
Excellent	A+	90 - 100%	4.0	A+	90 - 100%
	A	85 - 89%	4.0	A	85 - 89%
	A-	80 - 84%	3.7	A-	80 - 84%
Good	B+	77 - 79%	3.3	B+	77 - 79%
	B	73 - 76%	3.0	B	73 - 76%
	B-	70 - 72%	2.7	B-	70 - 72%
Adequate	C+	67 - 69%	2.3		
	C	63 - 66%	2.0		
	C-	60 - 62%	1.7		
Marginal	D+	57 - 59%	1.3		
	D	53 - 56%	1.0		
	D-	50 - 52%	0.7		
Inadequate	F	0 - 49%	0.0	FZ	0 - 69%

Approved grade scales that are outside the standard system:

H (Honours), P (Pass), FL (Failure).

In cases where the FL grade is used in calculating grade point averages, the symbol FL% is used and a grade point value of 0.0 is assigned.

CR (Credit), NCR (No Credit).

In cases where the NCR grade is used in calculating grade point averages, the symbol NC% is used and a grade point value of 0.0 is assigned.

HUMBOLDT-UNIVERSITÄT ZU BERLIN



Faculty of Arts and Humanities
Department of Philosophy

Transcript of Records

Mr Peter Povilonis

born on 06 Aug 92 in Aurora
Student No. 592849

Degree: Master of Arts
Major Field: Philosophy

Title	Credits	Grade	AA	Date
Philosophy				
Compulsory Area				
Elective				
HS Advanced Seminar Elective.....	4	BE		31 Mar 19
HS Advanced Seminar Elective.....	4	BE		13 Feb 19
HS Advanced Seminar Elective.....	4	BE		31 Mar 19
Module grade:	BE			
ECTS credits:	12			
Focus Topic: Practical Philosophy				
KO Practical Philosophy.....	2	BE		02 Apr 19
HS Practical Philosophy.....	4	BE		18 Feb 18
HS Practical Philosophy.....	4	BE		23 Jul 19
MP Final Module Examination.....	8	1,3		02 Apr 19
Module grade:	1,3			
ECTS credits:	18			
Project Work				
PK Project Tutorial.....	4	BE		15 Feb 18
KV 11th International Critical Theory Conference in Rome.....	2	BE		30 Sep 18
KV Australasian Society of Legal Philosophy Annual Conference 2019.....	2	BE		10 Aug 19
Module grade:	BE			
ECTS credits:	8			
Final Module - Master Thesis, Colloquium and Defense				
MT Master Thesis.....	26	2,3		12 Sep 19
KO Master Thesis Colloquium.....	2	BE		30 Sep 19
VE Defense.....	2	2,0		21 Nov 19
Module grade:	2,2			
ECTS credits:	30			
Grade:	1,8			
ECTS credits:	68			
Compulsory Elective Area				
Focus Topic: Practical Philosophy				
HS Practical Philosophy.....	4	BE		30 May 18
VL Practical Philosophy.....	2	-		30 May 18
MP Final Module Examination.....	8	1,0		30 May 18
Module grade:	1,0			
ECTS credits:	14			

Title	Credits	Grade	AA	Date
Focus Topic: History of Philosophy				
VL History of Philosophy.....	2	-		05 Sep 18
HS History of Philosophy.....	4	BE		05 Sep 18
MP Final Module Examination.....	8	2,3		05 Sep 18
Module grade:	2,3			
ECTS credits:	14			
Focus Topic: Political Philosophy, Social Philosophy and Anthropology				
VL Focus Topic: Political Philosophy, Social Philosophy, and Anthropology.....	2	-		14 Aug 19
HS Focus Topic: Political Philosophy, Social Philosophy, and Anthropology.....	4	BE		14 Aug 19
MP Final Module Examination.....	8	2,3		14 Aug 19
Module grade:	2,3			
ECTS credits:	14			
Grade:	1,8			
ECTS credits:	42			
Interdisciplinary Compulsory Elective Area				
Interdisciplinary Compulsory Elective Module				
LV Supplementary Professional Knowledge.....	4	BE		05 Aug 19
LV Thinking about God in a World come of age.....	4	BE		05 Aug 19
LV Supplementary Professional Knowledge.....	5	BE		05 Aug 19
Module grade:	BE			
ECTS credits:	13			
Grade:	BE			
ECTS credits:	10			

Master of Arts

MA Master of Arts.....	120	1,8	21 Nov 19
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	Credits obtained:	Credits to be obtained:	Final Grade:	[Intermediate Grade]:
Philosophy	120	0	1,8	-
Total	120	0	1,8	-

The degree Master of Arts has been completed. Date: 21 November 2019.

Berlin, 26 November 2019

Examinations Office

HUMBOLDT-UNIVERSITÄT ZU BERLIN
Philosophische Fakultät
Prüfungsbüro
Unter den Linden 6
10099 Berlin Seal

BE passed
NB failed (number of trials)
EN ultimately failed
AN registered
AB submitted
PV module not completed

BW/BZQ Professional fields/Additional Professional Qualification

Courses: KV - Conference Visit; PK - Project; MP - Module Examination; MA - Final Examination Master; VE - Defence; KO - Colloquium; VL - Lecture; HS - Advanced seminar; MT - Master Thesis; LV - Course;
AA - Approved achievements:

1,0/1,3 = very good; 1,7/2,0/2,3 = good; 2,7/3,0/3,3 = satisfactory; 3,7/4,0 = sufficient; 5,0 = fail

HUMBOLDT-UNIVERSITÄT ZU BERLIN



05.12.2019
HUMBOLDT-UNIVERSITÄT ZU BERLIN
Philosophische Fakultät
Prüfungsbüro
Unter den Linden 6
10099 Berlin

TRANSCRIPT OF ACADEMIC RECORD

NAME OF STUDENT: **Peter Povilonis** ENROLLED AT: **Humboldt-Universität zu Berlin**
 DATE OF BIRTH: **08/06/1992** AS A FULL TIME STUDENT SINCE: **Winter Semester 2017**
 PLACE OF BIRTH: **Aurora, USA** MAJOR SUBJECT/S: **Philosophy**
 IMMA-NR.: **592849**
 HOME ADDRESS **Christinenstr. 29, Berlin, 10119**

SEMESTER	COURSE TITLE	PROFESSOR	COURSE REQUIREMENTS	TYPE	HOURS/ WEEK	HU GRADE	= US GRADE
Winter 2017-2018	Zur Aktualität der Ideologiekritik <i>Re-thinking Ideology</i>	Prof. Dr. Rahel Jaeggi	10,000-word Essay, Presentation	Seminar	2	2,3	B+
Winter 2017-2018	Herbert Marcuse: Sozialpsychologie und Gesellschaftskritik <i>Herbert Marcuse: Social psychology and Critique of Society</i>	Dr. Eva von Redecker	10,000-word Essay, Reading Summaries	Seminar	2	1,0	A+
Winter 2017-2018	Hegels System <i>Hegel's System</i>	Prof. Dr. Andreas Arndt	Active Participation and Preparation of Texts	Lecture	2	--	--
Winter 2017-2018	Totalitarismus: Hannah Arendts „Elemente und Ursprünge totaler Herrschaft“ <i>Hannah Arendt's "Origins of Totalitarianism"</i>	Prof. Dr. Friedbert Rüb	Short Essays and Participation	Seminar	2	--	--

März 2013

1

Peter Povilonis

Name of Student

SEMESTER	COURSE TITLE	PROFESSOR	COURSE REQUIREMENTS	TYPE	HOURS/WEEK	HU GRADE	= US GRADE
Winter 2017-2018	Ästhetische Perspektiven der kritischen Theorie <i>Aesthetic Perspectives of Critical Theory</i>	Robin Becker	Presentation and Participation	Project Tutorial	2	--	--
Summer 2018	Deutscher Idealismus und Skeptizismus <i>German Idealism and Skepticism</i>	Prof. Dr. Reed Winegar	10,000-word Essay, Reading Responses	Seminar	2	2,3	B+
Summer 2018	Freiheit in der Philosophie des deutschen Idealismus <i>Freedom in the Philosophy of German Idealism</i>	Prof. Dr. Reed Winegar	Active Participation and Preparation of Texts	Lecture	2	--	--
Summer 2018	Kants Tugendlehre <i>Kant's Doctrine of Virtue</i>	Dr. Maike Albertzart	Short Essays and Participation	Seminar	2	--	--
Summer 2018	Politische Philosophie <i>Political Philosophy</i>	Prof. Dr. Gabriel Wollner	Active Participation and Preparation of Texts	Lecture	2	--	--
Summer 2018	Bonhoeffer <i>Bonhoeffer</i>	Prof. Dr. Wolfgang Huber, Prof. Dr. Torsten Meireis	Short Essays and Participation	Seminar	2	--	--
Winter 2018-2019	Einwilligung <i>Consent</i>	Dr. Jan Gertken	10,000-word Essay, Short Essays	Seminar	2	1,3	A

2

Internationales Büro
HUMBOLDT-UNIVERSITÄT ZU BERLIN
September 2012

Peter Povilonis

Name of Student

SEMESTER	COURSE TITLE	PROFESSOR	COURSE REQUIREMENTS	TYPE	HOURS/WEEK	HU GRADE	= US GRADE
Winter 2018-2019	Normativität und Subjektivität bei Kant und Fichte <i>Normativity and Subjectivity for Kant and Fichte</i>	Prof. Dr. Tobias Rosefeldt	Short Essays and Participation	Seminar	2	--	--
Winter 2018-2019	Meinungsverschiedenheiten <i>Disagreement</i>	Dr. Romy Jaster	Short Essays and Participation	Seminar	2	--	--
Winter 2018-2019	Kolloquium Praktische Philosophie <i>Colloquium in Practical Philosophy</i>	Prof. Dr. Kirsten Meyer	Active Participation and Preparation of Texts	Colloquium	2	--	--
Winter 2018-2019	Thinking about God in a World of Age to Come: Secularism	Dr. Christopher Shaw	Short Essays and Participation	Seminar	2	--	--
Summer 2019	Autonomy: Old and New	Prof. Dr. Tobias Rosefeldt	Active Participation and Preparation of Texts	Seminar	2	--	--
Summer 2019	Critical Theory Summer School	Prof. Dr. Rahel Jaeggi	Presentation and Participation	Workshop	2	--	--
Summer 2019	Kolloquium Sozialphilosophie <i>Colloquium Social Philosophy</i>	Prof. Dr. Rahel Jaeggi	Presentation and Participation	Colloquium	2	--	--
Summer 2019	Masterabschlussarbeit Sprachliche Verteidigung <i>Master's Thesis Oral Defense</i>	Prof. Dr. Rahel Jaeggi	25,000-word Thesis	Writing		2,3 2,0	B+ A-
Final GPA						1,8	A / A-

März 2013

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June 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Peter Povilonis of the University of Chicago Law School class of 2023, for a judicial clerkship. I have had the privilege of teaching Peter in two seminar-type classes, where I got to know him and his academic, analytical, writing, and oral skills extremely well. He was my top student in one of those classes and one of my best students in the other. I am confident he will be a superb clerk, who will bring high intelligence, exceptional analytical and writing skills, a strong work ethic, and exemplary ethics and good judgment to your chambers. I am also confident that you will enjoy working with him and find that he is a great and supportive team member. In short, I highly recommend Peter for a clerkship, without reservation.

I have taught Peter in two classes: "Law and Public Policy: Case Studies in Problem-Solving", in the fall of 2021; and "Advanced Evidence: Key Legal Principles and Their Practical Application", in the spring of 2022. Both are "experiential" classes in which students are assigned real-life problems in which they analyze and advise clients on complex legal and policy issues (Law and Public Policy) or argue in support of or against evidentiary objections and motions in limine and conduct direct and cross examinations laying the foundation for or opposing the admissibility of various types of evidence (Advanced Evidence). Both classes are limited to 20 students, which gives me a unique opportunity to really get to know my students and their analytical and problem-solving and written and oral communication skills. This exposure and familiarity is bolstered by the fact that I use the Socratic Method extensively in both classes and that, given the small class size, every student performs a role-playing exercise and/or answers questions in almost every class. In addition, students are required to submit three written assignments in each class, in which I provide detailed comments and line edits similar to that which I have provided associates and younger partners during my 40-plus years at Kirkland.

Peter had the highest writing, class participation, and overall grade in my Law and Public Policy course last fall, and he was one of my best and top students in my Advanced Evidence class last spring. This is among a cohort of really bright and talented students in both classes. His oral comments and arguments are uniformly cogent, well-reasoned, and nuanced and insightful. And, they are consistently presented clearly and persuasively and with a natural confidence and presence. Peter is also a gifted writer. His written work product is well-organized, clear, thoroughly researched and well thought out, and both persuasive and easy to read. In short, Peter has demonstrated, consistently, in both classes, exactly the skills I have looked for in young lawyers during my four decades in private practice and that I think will make him an excellent clerk.

Peter started his law school career at UCLA, before transferring to the University of Chicago last fall, at the beginning of his second year. He finished his first year at UCLA at or near the top of his class, and participated in its mock trial competition, in which he competed as a 1L against 2L's and 3L's and finished sixth overall. During the summer after his first year (2021), Peter served as a judicial extern for District Judge Christina Snyder of the U.S. District Court for the Central District of California. In that role, Peter drafted several orders and decisions, including rulings on motions to dismiss and for compassionate release. He also reviewed and drafted "jurisdiction reports" and summaries for approximately 20 newly filed cases, which analyzed whether the Court had subject matter jurisdiction and provided a summary of the claims asserted. He also had an opportunity to observe a lengthy and highly publicized criminal trial. Peter thoroughly enjoyed his experience as an extern and I think it was a major contributor to his desire to become a clerk.

Upon transferring to the University of Chicago last fall, Peter hit the ground running and has not let up. Last fall, he participated in the Law School's Hinton Moot Court competition, which is a highly competitive and rigorous competition that involves intensive training and feedback with respect to both brief writing and oral argument. Given the added work involved, only a relatively small percentage of students elect to participate. I mention this because I think Peter's participation is a further example of the training he has received, and his commitment to developing the skills that will make him a first-rate clerk.

Peter has also completed two stints as a research assistant for Law School faculty members. From July 2021 through September 2021, Peter completed an exhaustive research project for Professor Jennifer Nou, in which he reviewed more than 500 sources concerning governmental agencies' "sub-delegation" of their regulatory and other administrative authority to other governmental entities, for a law review article Professor Nou is writing. Last January and February, Peter also completed a major research project for Professor Farah Peterson. That project involved an exhaustive historical analysis of modern cases in which courts have decided claims alleging political violence by White nationalist or Black civil rights protesters and organizations for an article Professor Peterson is writing, which was recently accepted for publication in the Columbia Law Review. Once again, I believe this experience demonstrates the training and skills Peter has worked hard to develop and that will further ensure his success and value as an intern.

Stephen Patton - stephen.patton@kirkland.com - (847) 846-5405

Finally, Peter recently completed a successful summer working at Kirkland's Washington, D.C. office as a summer associate, where he was highly regarded and received an offer of full-time employment.

In summary, I believe that Peter will be an outstanding clerk and I highly recommend him to you. He has a keen intellect and excellent analytical skills. He is a terrific writer. And, he is extremely enthusiastic, hard-working, and conscientious. I am also confident that you will find him to be collegial and easy to work with, and a solid, dependable, and collaborative team member.

Please feel free to call or write if you have questions or would like to discuss Peter in real time. You can reach me at stephen.patton@kirkland.com or 312-862-3501.

Sincerely,

Steve Patton

Stephen Patton - stephen.patton@kirkland.com - (847) 846-5405

June 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Peter Povilonis for a clerkship with you. Peter has been a student in two of my classes—Foreign Relations Law (Spring 2022), and Federal Courts (Autumn 2022). He did very well in both classes, scoring each time in the top 10% of the group. His class participation was also excellent.

Peter and I have often talked outside of class, so I have a good sense of his interests and abilities. He is extremely smart and thoughtful and is also very curious about the law. In my office hours, he would often ask me hard questions that went beyond the materials simply because he was interested in knowing more. He also listens well, which is not always true of the brightest students. My discussions with him feel like genuine conversations.

Peter transferred to us from UCLA, where he had done very well his first year. Transferring is always a challenge and sometimes limits the opportunities that a student has at the new school, but he has managed to thrive here. While he has not participated on the law review, he has participated in other law school activities such as moot court, and he has worked as a research assistant to several professors. These activities, importantly, have given him additional writing experience. He has also used his summers well. Among other things, he has done a summer externship with a federal district court judge in California and has worked as a summer associate at Kirkland & Ellis, where he will be starting as an associate in the Fall.

Finally, Peter has an interesting background. His grandparents were Lithuanian refugees to Canada during World War II, and his parents grew up in Canada. Although his parents eventually moved to the United States, Peter did his undergraduate work at the University of Toronto. After that, he moved to Germany in order to learn German and study philosophy, and he also ended up working there for several years in a brewery. These international experiences give Peter a maturity and depth that distinguishes him from some of his classmates. Personally, I've really enjoyed getting to know him.

For all of these reasons, I strongly recommend him.

Sincerely,

Curtis A. Bradley

Curtis Bradley - bradleyca@uchicago.edu

Professor Brian Leiter
Karl N. Llewellyn Professor of Jurisprudence
Director, Center for Law, Philosophy and Human Values
The University of Chicago Law School
1111 E. 60th Street
Chicago, IL 60637
bleiter@uchicago.edu | 773-702-0953

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to write in enthusiastic support of Peter Povilonis, who has applied for a clerkship in your chambers. He will be an excellent clerk.

I have had Mr. Povilonis in two very different classes: Evidence and Jurisprudence. In my Winter 2022 class on Evidence, he received a grade of 182 on the three-hour multiple-choice exam which--on our rather complicated grading scheme--is a very solid A grade (180 starts the A range, and we rarely give grades higher than 184). The highest grade in the class was 184, and Mr. Povilonis's score puts him in the top 12% of a class with 88 students. Mr. Povilonis was also a regular in my office hours that quarter, and he always came well-prepared with detailed questions about the rules or the cases we had read. As office hours made clear, he is a very mature, serious and attentive student, and so I was pleased but not surprised by how well he did on the exam.

In Spring 2022, Mr. Povilonis took my introductory class on Jurisprudence. This class covers a range of issues in and around the theory of adjudication, the theory of how judges do decide cases and how they ought to decide them. The readings are drawn from O.W. Holmes, Karl Llewellyn, H.L.A. Hart, Ronald Dworkin, and Joseph Raz, among other important jurisprudential writers; the emphasis throughout is on detailed, critical analysis of the arguments advanced. The exam (an 8-hour take-home essay exam, with a strict word limit, so concision and organization are important) asked students to discuss how Hart, Dworkin and a contemporary natural law theorist, Mark Murphy, would answer the "age old question" (as Raz formulated it) "whether it is ever the case that a rule is a rule of law because it is morally binding, and whether a rule can ever fail to be legally binding on the ground that it is morally unacceptable." Mr. Povilonis wrote a crisp, precise and very good answer, picking up on nuances of the views of each author relevant to the question. He received a grade of 181, putting him in the top 7 of 33 students; only two students wrote clearly better exams (and one of those had a PhD in philosophy). Mr. Povilonis was also one of the three or four most lively and interesting participants in class discussion.

This academic year (2022-23), I have hired Mr. Povilonis as my primary research assistant (RA), based on the strong work he did for me in two different classes, as well as his background in philosophy and his excellent language skills (especially his near-fluency in German). He has been a really outstanding RA: careful, intelligent, and very helpful with some tricky translation questions raised by some German texts I am working with. Even with the most mundane tasks (like cite checks), his work has been precise and wholly reliable.

I also asked Mr. Povilonis for some writing samples. He gave me two pieces of writing. The first was what seemed to me a nicely done and informative literature review on empirical work related to subdelegation within federal agencies that he did for my colleague Professor Jennifer Nou, a leading expert on administrative law (who is currently serving in the Biden Administration). The second was a more jurisprudential piece examining different accounts by law professors and philosophers of how it is that "consent" can transform the legal status of an action (e.g., consenting to sexual intercourse means it is not rape). The latter was a very impressive and sophisticated piece of writing: lucid, subtle and interesting in its criticisms of the existing views in the literature. Mr. Povilonis is very interested in an academic career, and this paper on consent and issues in criminal law theory confirms that he is more than qualified to succeed in that career if he wants it.

His overall record since transferring to Chicago appears on track to be at least in the top third of the class and to graduate with honors (177 is the median grade, honors starts around 179 most years). Based on the work he has done for me, however, I would rank him more highly, more like the top 10-15% of the class. He certainly compares very favorably to prior students I have recommended who secured federal appellate and other demanding clerkships.

Mr. Povilonis gave me an enthusiastic report about all he learned from his judicial internship after his first year of law school, both about procedure and substantive legal issues. As a result, he is very eager to do a clerkship after graduating. He will bring to a clerkship an attractive combination of nuts-and-bolts knowledge, intellectual ambition, and very strong writing skills. On the evidence of all the work he has done for me and that I have read by him, I am confident Mr. Povilonis will be an excellent clerk, as well as a congenial presence in your chambers.

Sincerely yours,

Brian Leiter - bleiter@uchicago.edu - 773-702-0953

Brian Leiter
Karl N. Llewellyn Professor of Jurisprudence
Director, Center for Law, Philosophy, & Human Values

Peter Povilonis

630-818-0089 • povilonis@uchicago.edu • 5541 S. Everett Ave, Chicago, IL 60637

Writing Sample 1

The following writing sample includes excerpts from an essay I wrote for Constitutional Law Workshop, which I will be submitting for publication in the near future. I argue that the Court cannot simultaneously uphold and change the law without diminishing the policy justifications of stare decisis. I developed the thesis entirely on my own, although I did benefit from later discussion about the essay in the Workshop. Excerpted sections are noted with asterisks, and I removed multiple footnotes from the original piece for a smoother, quicker read.